United States Court of Appeals

for the Second Circuit

APPENDIX

B
PAS

75-1393

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-1393

UNITED STATES OF AMERICA,
Appellee,

—against—

JOE TRUMAN BOYD, ET AL.,
Defendants,

ERNEST R. MULLENAX,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX

Volume I—Pages A-1 to A-506

ROSENBERG, ROSENBERG & ROCKMAN
Attorneys for Defendant-Appellant,
Ernest R. Mullenax
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Garden City, New York 11530
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UNITED STATES COURT OF APPEALS
FILED
FEB 2 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

14

PAGINATION AS IN ORIGINAL COPY

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Consolidated with 75 Cr. 346 for pretrial and trial proceedings. MP

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CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

D. C. Form No. 100 Rev.

TITLE OF CASE

THE UNITED STATES

v.

1. JOE TRUMAN BOYD,
2. JAMES CALVIN JOINER,
3. ERNEST DARELL GOODLOE,
4. ROBERT E. FORD,
5. SELWYN WEBER,
6. EMERSON F. TITLOW,
7. ERNEST R. HILLMAN,
8. M. [illegible] KNIGHT,
9. HOWARD L. BROOKSHIRE,
10. WILLIAM WAYNE [illegible],
11. MARVIN J. RAPPAPORT,
12. STANLEY SCHLECK,
13. EDUARD VANASCO,
14. ALAN SEGAL,
15. ROGER BISSETT, and
16. JOHN WELLS,

ATTORNEYS

For U. S.:

[illegible], AUSA

For Defendant:

SEE ADDITIONAL PAGE FOR COMPLETE LISTING OF DEFTS.' ATTORNEYS **********

(04) STAT

DATE	NAME OR RECEIPT NO.	REC.	DISB.

J.S. 2 mailed — Clerk

J.S. 3 mailed 6/10/11/12/13 — Marshal

Violation — Docket fee

Title

Sec.

18:1341,1343 Mail & wire fraud.(Cts.1-28)
15:77(e),x),(q) Securities fraud.(Cts.29-51)
18:1001 Balse statements.(Cts52&53)
18:371 Consp. so to do.(Ct.1)
(Fifty-three Counts)

DATE	PROCEEDINGS
2-10-75.	Filed indictment.
2-24-75	Deft. Joe T. Boyd present (no atty.). Court enters a plea of not guilty, 10 days for motions. Bail fixed by court at $5,000 P.R.B. Deft. has until noon to sign. Deft. P/F.
	Deft. James C. Joiner present (no atty.). Court enters a plea of not guilty. Bail fixed by court at $5,000 P.R.B. Deft. has until Wednesday noon to sign. Deft. P/F.
	Deft. Ernest Goodloe present (no atty.).Court enters a plea of not guilty. Bail fixed by court at $5,000 P.R.B. Deft. has until Wednesday noon to sign bond. Deft. P/F.
	Deft. Robert Ford present (Atty. present)enters a plea of not guilty. Bail fixed by court at $5,000 P.R.B. Deft. has until Wednesday noon to sign bond. Deft. P/F.
	Deft. Selwyn Weber present (no atty.).Court enter a plea of not guilty. Bail fixed by court at $5,000 P.R.B. Deft. has until Wednesday noon to sign.
	Deft. Emerson Titlow present (Atty. present) enters a plea of not guilty. Bail fixed by court at $5,000 P.R.B. Deft. has until Wed.

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75 Consolidated with 75 Cr. 346 for pretrial and trial proceedings. 75 Cr. 240

~~CRIMINAL~~ ********** ATTORNEY LISTING **********

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	A REC EM H
	deft. Robert E. Ford atty: ~~Aranow,Brodsky,Bohlinger,Benetar~~			
	(see over) ~~Emhorn by: Paul K. Feldman~~			
	~~469 Fifth Avenue~~			
	~~New York, N.Y. 10017 tele: 889-1~~			
	deft. John Wells atty: Bert L. Bursrae tele: 227-3			
	deft. Howard L. Brookshire aatty: Brown,Wood,Fuller, Caldwell & Iv			
	by: Richard Conway Casey			
	James K. Manning			
	1 Liberty Plaza			
	New York, N.Y. 10006 tele: 349-7			
	deft. William Wayne Barnett atty: A.L. (Dusty) Rhodes			
	Rhodes,Doscher,Chalk & Heatherly			
	104 Citizens Bank Building			
	Abilene, Texas 79601			
	deft. Marvin J. Rapport atty: Morton Berger			
	54 Durham Road			
	White Plains, N.Y. 10607			
	deft. Stanley Schleger atty: Benyl I. Dulsky			
	146 Old Country Road			
	Mineola, N.Y. 11501			
	deft. Alan Segal atty: John H. Doyle, III			
	630 Fifth Avenue			
	New York, N.Y. 10020 tele: 397-9			
	deft. Roger Bisset atty: Rooney & Evans			
	Emerson Titlow 521 Fifth Avenue			
	New York, N.Y. tele: 682-4			
	deft. Ernest R. Mullenax atty: Joseph B. Ehrlich			
	Rosenberg,Rosenberg & Rockman			
	200 Garden City Plaza			
	Garden City,N.Y. 11530			
	(516) 248-4300			
	deft. Selwyn Webber atty: Joel Barnet Steinberg			
	401 Broadway			
	New York,N.Y. 10013 tele: 966-7			
	atty: Albert Kreiger			
	401 Broadway			
	New York,N.Y. 10013 tele: 925-5			

FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
	PLAINTIFF	DEFENDANT	
deft. MICHAEL GARDNER atty: Patrick F. Broderick 08 Bell Blvd Bayside, N.Y. 11361 229-6070			
Deft. Robert E. Ford new atty: Goldman & Hafetz 60 E. 42nd Street New York, N.Y. 10017 tele: 682-8337			

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75-0140 Judge Pollack Page 2

DATE	PROCEEDINGS
	Deft. Ernest Mullenax, B/W ordered.
	Deft. M.S. Knisely present (no atty.) Court enters aplea of not guilty. Bail fixed by court at $5,000 P.R.B. Deft. has until Wed. noon to sign bond. Deft. P/F.
	Deft. Howard Brookshire present (Atty. present) enters a plea of not guilty. Bail fixed by court at $5,000 P.R.B/Deft. has until Wednesday noon to sign bond. Deft. P/F.
	Deft. William Barnett present (Atty. present) enters a plea of not guilty Bail fixed by court at $5,000 P.R.B. Deft. has until Wed. noon to sign bond. Deft. P/F.
	Deft. Marvin Rappaport present (Atty. present) enters a plea of not guil Bail fixed by court at $5,000 P.R.B. Bail limits to U.S.A. Deft. has until Wednesday noon to sign bond.
	Deft. Stanley Schleger present (Atty. present) enters a plea of not guil Bail fixed by court at $5,000 P.R.B. Deft. has until Wednesday noon to sign bond. Deft. P/F.
	Deft. Edward Vanasco present (Atty. present) enters a plea of not guilty Bail fixed by court at $5,000 PRB. Deft. has until Wed. noon to sign bond. Deft. P/F.
	Deft. Alan Segal present (Atty. present) enters a plea of not guilty. Bail fixed by court at $5,000 P.R.B. Deft. has until 3-4-75 to sign the bond. Deft. P/F and bail limits to cover Miami Fla.
	Deft. Roger Bissett present (Atty. present) enters a plea of not guilty. Bail fixed by court at $5,000 P.R.B. Deft. has until Wed. noon to sign bond. Bail limits to cover Nevada.
	Deft. John Wells present (Atty. present) enters a plea of not guilty. Bail fixed by court at $5,000 P.R.B. Deft. has until Wednesday noon to sign bond. Bail limits to New Jersey and Pennsylvania. Lasker,J.
	Case assigned to Pollack,J. for all purposes.
02-24-75	J. Roger Bissett- filed PRB in the sum of $5,000. John Wells- filed PRB in the sum of $5,000. Emerson F. Titlow- filed PRB in the sum of $5,000. M.S. Knisley-filed PRB in the sum of $5,000. Joe Truman Boyd-filed PRB in the sum of $5,000. Ernest Darwin Goodloe- filed PRB in the sum of $5,000. William Wayne Barnett- filed PRB in the sum of $5,000. Selwyn S. Webber- filed PRB in thesum of $5,000. Stanley Schleger- filed PRB in the sum of $5,000. Marvin J. Rappaport- filed PRB in the sum of $5,000. James Calvin Joiner- filed PRB in the sum of $5,000. Robert E. Ford- filed PRB in the sum of $5,000. Howard L. Brookshire- filed PRB in the sum of $5,000.
02-25-75	Filed NOTICES OF APPEARANCE for: R. Bisset & E. Titlow by: Rooney & Evans, 521 5th Ave.,NYC 682-434 A. Segal by: John H. Doyle,III, 630 5th Ave., NYC 10020 397-972 S. Schleger by: Benyl L. Dulsky, 146 Old County Rd, Mineola NY 1150 M. Rapport by: Morton Berger, 54 Durham Rd.,White Plains,NY 10607 W. Barnett by: A.L. (Dusty) Rhodes,2581 Madison, Abilene, Texas 796 H. Brookshire by: Brown,Wood,Fuller Caldwell & Ivey,1 Liberty Plaza, N.Y.C. 10006 34 J. Wells by: Bent L. Gusrae 227-3300 R. Ford by: Paul K. Feldman,469 5th Ave.,NYC 10017 889-147

-cont'd on next page-

XXXXXXXXXXXXDocket Continuation

DATE	PROCEEDINGS
02-25-75	E. Vanasco- filed P.R.B. in the sum of $5,000.
02-24-75	E. Mullemax-Bench warrant issued.
03-04-75	S. Schleger- filed notice of motion re: copy and inspection.
03-05-75	W. Barnett- filed notice of motions for severance and separate trial, for bill of particulars, for inspection, and for discovery and Grand Jury minutes.
03-05-75	W. Barnett- Filed motion for severance and spparate trial.
03-05-75	W. Barnett- Filed motion for bill of particulars.
03-05-75	W. Barnett- Filed motion for discovery and inspection.
03-05-75	W. Barnett- Filed motion to inspect Grand Jury minutes.
03-05-75	W. Barnett- Filed waiver of deft.'s presence.
03-05-75	W. Barnett- Filed appearance praecipe by A.L. (Dusty) Rhodes,Esq.
03-06-75	S. Schleger- Filed notice of motion re: bill of particulars.
03-05-75	A. Segal - filed appearance bond in the sum of $5,000.
03-10-75	Filed memo-end. on motion docketed 03-06-75, Motion for bill of particulars is denied. The government shall comply with its obligations as to exculpatory material as required by the rule of Brady -vs- Maryland. Pollack,J. mn
03-11-75	Filed memo-end. on motion docketed 03-04-75. Granted to the extent consented to by the Govt. it its affdvt. filed herein sworn to 03-10-75 (prepared at the Court's instance to have uniform rulings on disclosure and particulars) and otherwise inall respects denied. Pollack,J. mn
03-11-75	Filed deft. M. Rappaport's motion for bill of particulars.
03-11-75	Filed deft. M. Rappaport's memo. of law in support of motion for bill of particulars.
03-11-75	Filed deft. M. Rappaport's motion re: pretrial discovery.
03-11-75	Filed deft. M. Rappaport's memo. of law in support of motion for pretrial discovery.
03-12-75	Filed Govt.'s affdvt.re: motion pursuant to Rules 7(f) & 16,etc.
03-12-75	Filed deft. R. Ford's notice of request for discovery and inspection pursuant toFRCP Rule 16.

DATE	PROCEEDINGS	Date O Judgmt
03-13-75	Filed memo-end. on motion docketed 03-12-75, An affdvt. dated 3-10-75 was filed inthis case by the Govt. to have uniform rulings on Discovery and Particulars. This motion is granted to the extent consented to by the Govt. in said affdvt. and otherwise in all respects denied. Pollack,J. mn	
03-13-75	Filed Govt.'s notice of motion re: order directing moniesbe paid,etc.	
03-13-75	Filed memo-end. on motion docketed 03-13-75. The motion is in all respects denied. The Govt. received $9,000. which it took as a satisfaction of the individual committed fines. Those payments cannot now be rescinded so as to resurrect a commitment ordered for non payment ofthe fines levied against the individuals,etc. Pollack,J. mn	
03-13-75	Filed memo-edd. on motion docketed 03-11-75 for pretrial discovery, Motion granted to the extent consented to by the Govt. in its affdvt. filed herein sworn to 3-10-75 and otherwise in all respects denied. Pollack,J. mn	
03-13-75	Filed memo-end. on motion docketed 03-11-75 for bill of particulars, motion granted to the extent consented to by the Govt. in its affdvt. filed herein sworn to 3-10-75 and otherwise in all respects denied. Pollack,J. mn	
03-17-75	Filed deft. Ford's request for particulars pursuant to FRCP Rule7(f).	
03-20-75	Filed affdvt. of Beryl 1. Dulsky re: response to the affdvt. submitted by the prosecution dated 03-10-75.	
03-19-75	Filed memo-end. on motion docketed 03-17-75. Granted to the extent consented to by the Govt. in its affdvt. filed herein, sworn to 3-10-75, (prepared at the Court's instance to have uniform rulings on disclosure and particulars) and otherwise in all respects denied. Pollack,J. mn	
03-24-75	Edward Vanasco- filed magistrate's orig. papers: (1) docket entry sheet (2) appointment of counsel.	
04-14-75	Filed (Emerson F. Titlow) CJA 23 financial affdvt.	
04-16-75	E. Mullenax-filed papers from Western Dist. of Oklahoma: waiver of removal hearing,order specifying methods and conditions of release,docket sheet, removal order out of custody & appearance bond.	

-cont'd. on next page-

... pretrial and trial proceedings.

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS
04-27-75	Filed memo-end. on motion docketed 3-5-75 for discovery and inspect "Motion denied except as consented in Govt. affdvt. of 3-10-7 Pollakk,J. mn
04-23-75	Filed memo-end. on motion docketed 3-5-75 for bill of particulars "Motion denied except as consented to in Govt. affdvt. of 3-10-75" Pollack,J. mn
04-23-75	Filed memo-end. on motion docketed 3-5-75 for severance and separat trial" Motion denied. See Govt. affdvt. of 3-10-75.Pollack,J.
4-23-75	Filed memo-end. on motion docketed 3-5-75 for inspection of Grand Ju minutes" Motion denied." Pollack,J. mn
05-16-75	Filed warrant for arrest of Ernest Mullenaxand return dated 4-10-75 deft. released on $10,000. bond, on 4-10-75.
05-16-75	Filed notice of appearance of atty. for deft. Ernest R. Mullenax.
05-16-75	Filed Govt.'s bill of particulars.
05-20-75	Filed Govt.'s notice of motion re: consolidation (75 Cr. 346) ret: 5-30-75.
05-23-75	Filed deft. Bissett's notice of motion and supporting affdvts. re: dismissal or severance ret: 5-30-75.
05-23-75	Filed deft. Bissett's affdvt. in opposition to motion for consolidation.
06-03-75	Filed notice of appearance of atty. for deft. Selwyn Webber by Josel Barnett Steinberg and Albert J. Krieger.
06-06-75	Filed deft. Howard L.Brookshire's notice of motion re: severance ret: 6-13-75.
06-06-75	Filed deft. H. Brookshire's memo. of law insupport of motion for severance.
05-30-75	Filed memorandum(disposition sheet) from Magistrate Jacobs 5-30-75 deft. Ernest R. Mullenax pleads not guilty,etc.
06-12-75	Filed notice of appearance of atty. for deft. Selwyn Webber by Josel Barnet Steinberg and Albert J. Krieger
06-12-75	Filed deft. M. Rappaport's motion re: speedy trial.
6-12-75	Filed deft. M. Rappaport's memo. of law re: speedy trial.
06-12-75	Filed deft. R. Ford's notice of motion and affdvt. re: severance ret: 6-27-75.
06-12-75	Filed deft. R. Ford's memo. of law re: support of motion for severance.

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DATE	PROCEEDINGS	Date O Judgme
06-13-75	Filed Govt.'s notice of readiness for trial.	
06-25-75	Filed deft. E. Mullenax's notice of motion re: severance,dismissal, strike,etc.	
06-25-75	Filed deft. E.Mullenax's memo. of law in support of motion for severance,etc.	
07-22-75	Filed deft. S. Michael Gardner's affdvt. re: opposition to Govt.'s motion to consolidate.(also 75 Cr. 346)	
07-22-75	Filed deft. E. Mullenax's affdvt. re: opposition to motion to consolidate.	
07-22-75	Filed memo-end. on motion for consolidation - The govt.'s motion for consolidation of these indictments for purposes of pretrial and trial proccedings is granted,etc. Pollack,J. m/n	
07-22-75	Filed memo-end. on motion docketed 6-25-75. Motion of deft. Mullenaz for dismissal of various counts of the indictment and to strike the Introduction therefrom. These motions are denied in all respects. The motions for discovery and particulars are denied in all respects except insofar as consented to in the govt.'s 3-10-75 affdvt.,etc. motion for severance is denied,etc. Pollack,J. m/n	
07-22-75	Filed memo-end. on motion docketed 6-6-75. Motion of deft. Brookshire for severance is granted,etc. Pollack,J. m/n	
07-22-75	Filed memo-end. on motion docketed 5-23-75. Motion of deft. R. Bissett to dismiss is denied,etc. Pollack,J. m/n	
07-22-75	Filed memo-end. on motion docketed 6-12-75. Motion of deft. R. Ford for severance is denied. Pollack,J. m/n	
07-22-75	Filed memo-end. on motion docketed 6-12-75. Motion of deft. Rappaport for order setting a trial - trial is set for 9-29-75. Motion for severance is denied. etc. Pollack,J. m/n	
07-22-75	Filed Govt.'s affdvt. re: opposition to motion of deft. Rappaport for severance,etc.	
07-22-75	Filed Govt.'s affdvt. re: opposition to motions of defts. Ford,Bissett, Mullenaz and Brookshire for severance,etc.(also 75 Cr. 346)	
07-23-75	Filed ORDER that the Clerk of this Court shall issue subpoenas duces tecum under Rule 17(c) in blank, to be signed by U.S.Atty. which shall be returnablein order to expedite the trial of the indictments herein, on 9-1-75. Pollack,J. mn	
7-23-75	E. Mullenax- filed magistrate's orig. papers:docket sheet,disposition sheet.	

-cont'd. on next page-

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS
08-27-75	Filed deft. E. Mullenax's notice of motion re: order quashing and/or modifying the subpoenae duces tecum sttached to the affdvt. of Joseph B. Ehrilich,etc.
08-27-75	Filed deft.E. Mullenax's notice of motion re: severance,etc.
08-29-75	Filed deft. M. Rappaport's notice of motion re: quash subpoena duces tecum. ret: 9-2-75.
08-28-75	Filed affdvt. for writ of habeas corpus ad testificandum for Jim Peterson. Writ issued ret. 9-8-75
08-29-75	Filed ORDER that T. Spradlin and T. Finney,Jr. are granted leave to file motion to Modify Subpoena and memo. in support-etc. Pollack,J.
08-29-75	Filed Motaon to modify subpoena,etc.
09-03-75	M. Gardner-filed CJA 20 appointment of counsel, Patrick Broderick. 76 Beaver Street,N.Y.C 10003 tele: 229-6070. Magistrate Jacobs (issued copies CJA Clerk)
09-03-75	Filed notice of appearance of atty. for deft. Michael Gardner. by Patrick F. Broderick,Esq., 38-08 Bell Blvd. Bayside,N.Y.
09-03-75	Filed memo-end. on motion docketed 8-29-75. The within motion has been resolved by agreement of counsel for the parties.Pollack,J.
09-05-75	Filed deft. R. Ford's notice of motion re: quash or modifysubpoena ret: 9-8-75 at 10:00AM.
09-08-75	Filed Govt.'s bill of particulars.
09-08-75	Filed deft. Roger Bissett's notice of motion re: reargue motion for severance.
09-8-75	Filed memo-end. on motion of deft. Bissett for reargument, "Motion for reargument of severance is denied" Pollack,J.m/n
09-08-75	Filed memo-end. on motion of 8-29-75 of M. Rappaport to quash subpoena duces tecum. The matters herein are to be adjusted between the parties and their agreement will suffice. Pollack,J. m/n
09-08-75	Filed memo-end. on motion docketed 9-5-75 of deft. R. Ford for order quashing subpoena." Counsel for deft. Ford is to advise the govt. his position on documents in Ford's possession and control and the govt. will take further action as it may be advised. Pollack,J. m/n
09-09-75	Filed CJA Financial affdvt. for Michael Gardner.
09-15-75	Filed CJA Financial affdvt. for M.S. Knisely.
09-15-75	Filed CJA Financial affdvt. for E. Goodloe.
09-10-75	Filed writ for habeas corpus ad testificandum for M. Gardner. (75 Cr. 346)

7-22-75 Consolidated with 75 Cr. 346 for pretrial and trial proceedings.

DATE	PROCEEDINGS	Date Judgm
-16-75	Deft. Alan Segal(atty. present) now pleads guilty as to counts 1,3,30,42 and 53 only. Open counts carried until date of sentence. Pre-sentence report ordered. For sentence 12-5-75 at 10AM room 519. Deft. cont'd. released on own recognizance.	
	Deft. James Calvin Joiner(atty present) (correct name Jimmy Calvin Joiner) now pleads guilty as to count 1. Open counts carried until date of sentence. For sentence 12-5-75 at 10AM. rm 519 Deft. released on own recognizance.	
	Deft. John Wells (atty. present) now pleads guilty to count 1 only. Open counts carried until date of sentence. For sentence 12-5-75 at 10AM. room 519. Bail cont'd. Bail limits extended to include the continental United States. Pollack,J.	
9-16-75	John Wells -filed deft's acknowledgment of constitutional rights.	
9-16-75	Jim Joiner- filed deft's acknowledgment of constitutional rights.	
9-16-75	Alan Segal- filed deft.'s acknolwedgment of constitutional rights.	
9-16-75	Filed memo-end. on motion docketed 8-27-75. Deft. Mullenax's motion for renewal and reconsideration of the motion for severance heretofore denied, having been duly considered is in all respects,denied. Pollack,J. m/n	
9-19-75	Filed deft. E. Mullenax's no ice of motion re: inspection of Grand Jury minutes,dismissal,etc.	
9-19-75	Filed deft. E. Mullenax's proposed examination on the voir dire.	
09-19-75	Filed writ ofhabeas corpus ad testificandum for Jim Peterson 9-4-75 writ satisfied.	
9-24-75	Filed deft. E. Mullenax's notice of motion re: hearing,etc.	
9-26-75	Filed deft. E. Mullenaz's reply affdvt. re: affdvt. of W.C. MacDonald in opposition to motion for inspection.	
09-26-75	Filed deft. J. Truman Boyd's proposed examination of prospective jurors.	
9-29-75	Filed letter from J. Ehrilich to Judge Pollack dated 9-24-75,re:Mullena	
9-29-75	Filed memo-end. on letter docketed this date. Deft. Mullenax' appl. is a further attempt to derail the trial set for 9-29-75...denied Pollack,J. m/n	
9-29-75	Filed Govt.'s affdvt. re: response to the motion of deft. Mullenax' motion.re: discovery of Grand Jury minutes,etc.	
9-29-75	Filed memo-end. on motion docketed 9-24-75. Deft. Mullenax' motion made on the eve of trial months after a trial date was set and lon; after the time fixed at deft.'s arraignment for motions, is untimely, fails to show a particularized need for the Grand Jury minutes, contains incorrect claims as to those who testified there and contains no sufficient showing for a Kastigar hearing. the motion is denied as a pretrial matter but maybe renewed ppst-trial upon a sufficient showing for relief. Pollack,J. m/n	

-cont'd on page 9-

7-22-75 Judge Pollack Consolidated with 75 Cr. 346 for pretrial and trial p:

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DATE	PROCEEDINGS
9-29-75	Filed memo-end. on motion docketed 9-19-75. Deft. Mullenax' appli. is in all respects denied. There is no merit to the motion and no particularized genuine need is shown for the relief requested. Pollack,J. m/n
9-29-75	Filed memo-end. on motion docketed 8-27-75.deft. Mullenax' motion for order quashing and/or modifying the subpoenae duces tecum etc., granted as stated on the record at hearing of 9-26-75. Pollack,J. m/n
9/29/75	ALL DEFTS. EXCEPT J.C.JOINER: H.L.BROOKSHIRE; A. SEGAL & J. WELLS---BEFORE: POLLACK,J. -JURY TRIAL BEGUN. (Consolidated with 75 CR.346)
9-30-75	TRIAL CONTD.
10-1-75	Filed Order substituting Robert E. Ford's attorney-new atty: Goldman & Hafetz. Pollack,J. (see atty sheet)
10-1-75	TRIAL CONTD.
10-2-75	TRIAL CONTD.
10-3-75	TRIAL CONTD.
10-6-75	TRIAL CONTD.
10-7-75	TRIAL CONTD.
10-8-75	TRIAL CONTD.
10-9-75	TRIAL CONTD. GOVT. RESTS. Motions of deft. WEBER are reserved until Oct. 10, 1975. Motions of defts. KNISELY and BISSETT--DECISION RES ALL OTHER DEFTS. -ALL MOTIONS DENIED. POLLACK,J.
10-10-75	TRIAL CONTD. Motions of deft. KNISELY are DENIED. Motions of deft. BISSETT -DECISION RESERVED. Deft. WEBER'S Motion for a Mistrial an a Severance -GRANTED. Defts. BOYD and GOODLOE REST.
10-14-7	TRIAL CONTD. Motions of defts. RAPPAPORT and BISSETT are DENIED. All DEFTS. except deft. BARNETT -REST.
10-14-75	Filed affidavit of E.D.Goodloe in support of motion for severance made by W. Wayne Barnett.
10-14-75	Filed affidavit of Joe T.Boyd in support of motion for severance made by W.Wayne Barnett.
10-10-75	Trial cont'd. Motions of deft. Knisely are denied. Motions of deft. Bissett- decision reserved. Deft. Webers' motion for a mistrial and a severance - granted. Defts. Boyd and Goodlo rest.
10-14-75	Trial cont'd. Motions of defts. Rappaport and Bissett are denied All defts. except deft. Barnett rest.
10-15-75	Trial cont'd.
10-16-7	Trial cont'd.
10-17-75	Trial cont'd.

-cont'd. on next page-

DATE	PROCEEDINGS	Date Judge
10-18-75	Trial cont'd, defts. [redacted]-found not guilty. Defts. discharged. Bail exonerated.	
	Defts. BOYD, GOODLOE-found GUILTY as charged.	
	Deft. [redacted]-found GUILTY on each of cts. 1-5 incl. Not guilty cts. 6, 7, 8.	
	Deft. BOYD-cont'd, on present bail and given until 10-24-75 at 5PM. to post increased bail of $15,000. cash or surety. Bail limits to include States of Texas, and Southern District of New York.	
	Deft. GOODLOE-cont. cont'd, on present bail and given until 10-24-75 to post increased bail of $15,000. cash or surety. Deft. to surrender his passport to U.S. Attorney.	
	Deft. [redacted]-deft. continued on present bail and given until 10-24-75 at 5PM. to post increased bail of $10,000. cash or surety. Bail limits to include the States of [redacted], Indiana, Ohio, Kansas, Missouri, Illinois and Indiana.	
	Defts. BOYD, GOODLOE AND [redacted]-motions denied. P.S.R. ordered. Sent. 12-2 at 9:30A.M. Room 519. Pollack, J.	
10-20-75	Trial cont'd. Defts. [redacted] found not guilty. defts. discharged. [redacted] found Guilty Pre-sentence report ordered. For sentence 12-2-75 at 10:15AM. room 519. Bail cont'd. Motions of defts. Ford and Knisley are denied. Knisley found GUILTY. P.S.R. ordered. For sentence 12-2-10:15AM Bail cont'd. Ford and Knisely motions denied. Pollack, J.	
10-22-75	Filed deft. R. Mullenax's notice of motion for reduction in bail.	
10-29-75	defts. J.T. Boyd & E.D. Goodloe-Govt. moves for the issuance of bench warrants. Defts. give until 10-31-75 at 12 noon to deposit with the Clerk of the Court, cash bail or surety of a bonding company authorized to do business in this Court. Remands ordered now for then. Pollack, J.	
10-31-75	J. Boyd & E. Goodloe-bench warrants issued.	
10-31-75	Filed memo-end. on motion docketed 10-22-75. Motion withdrawn by moving party. Pollack, J. m/n	
11-03-75	Filed Govt.'s affdvt. re: opposition to Mullenax's renewwd motions to inspect the entire Grand Jury record, etc.	
11-6-75	E. Goodloe-filed remand dated 10-29-75.	
11-6-75	J. Boyd-filed remand dated 10-29-75.	
11-7-75	Filed transcript of record of proceedings, dated Sept 2, 3, 8, 26, 1975	
11-7-75	Filed transcript of record of proceedings, dated Sep 24, 30 Oct 1, 2, 1975.	
11-7-75	Filed transcript of record of proceedings, dated Oct 3, 6, 7, 8, 1975.	
11-7-75	Filed transcript of record of proceedings, dated Oct 9, 10, 14, 15, 1975.	
11-7-75	Filed transcript of record of proceedings, dated Oct 16, 17, 18, 20, 1975.	
11-18-75	Filed affidavit of W. Cullen MacDonald in opposition to deft's renewed motions to inspect the entire grand Jury.	

-cont'd. on next page-

Rev. Civil Docket Continuation

DATE	PROCEEDINGS
11-17-75	Joe Truman Boyd(atty. present) Ernest Darwin Goodlow(atty. present) Oral appl. of defts. that their present bail be continued. The defts. are directed to appear in the Probation Office and make arrangements with the Probation Officer to serve his convenience, in the matter of obtaining the requisite data for a probation report, including compliance with any requirements of the local probation office who may have to be consulted for local matters and report on local matters. The bench warrants are vacated upon completion of the deposit of the checks with the Clerk of the Court immddiately. (See stenographic minutes) Pollack,J.
11-24-75	Transcript of record of proceedings filed, dated 9-16-75.
11-17-75	Filed appearance bond for J. Boyd in the sum of $15,000.
11-28-75	Filed OPINION # 43450-...Accordingly, deft. Ernest Mullenax' renewed motions are all denied. Pollack,J. mn
11-28-75	Filed Letter from J. Ehrlich to Judge Pollack dated 10-24-75.
12-2-75	M.S. KNISELY-filed notice of appeal from judgment of 12-2-75. copy to U.S. Atty. and deft.
12-2-75	ROBERT E. FORD (atty. present) Filed JUDGMENT - 5 yrs. impr. on ea. of cts. 1 to 53 incl. to run conc. w/ea. other. Pur. to Sec. 4208(a)(2) of T. 18 U.S. Code, deft. shall become eligible for parole at such time as the Board of Parole May determine. Deft. advised of his right to appeal. Bail pending appeal fixed at $20,000. cash or surety to be posted by 12-11-75 at 10 A.M. or deft. is to surrender to the U.S. Marshal in oom 506 for service of sentence at that time. Pollack,J. issued all copies.
12-2-75	ERNEST DARWIN GOODLOE (atty. present) Filed JUDGMENT - 5 yrs. impr. on ea. of cts. 1 to 53 incl. to run conc. with each other. Pur. to Se. 4208(a)(2) of T. 18,U.S. Code, deft. shall become wligible for parole at such time as the Board of Parole may determine. Deft. advised of his right to appeal. Bail pending appeal fixed at $25,000. cash. Pollack,J. issued all copies.
12-2-75	JOE TRUMAN BOYD(atty. present) Filed JUDGMENT - 5 yrs. impr. on ea. of cts. 1 to 53 incl. to run conc. w/ea. other. Pur. to Sec. 4208(a)(2) of T. 18 U.S. Code, deft. shall become eligible for parole at such time as the Board of Parole may determine. Deft. advised of his right to appeal. Bail pending appeal fixed at $35,000. cash or surety and subject further to appropriate restrictions to the bail limits of the Court. Pollack,J. issuedall copies.
12-2-75	M.S. KNISELY(atty. present) Filed JUDGMENT - 5 yrs. impr. on ea. of cts. 1 to 53 incl. to run conc. with each other, and on condition that deft. be confined in a JAIL TYPE institution for a period of 2 mons., the execution of the remainder of the sentence of imprisonment is suspended and the deft. is placed on probation for a period of 2 years, subject to the standing probation order of this Court. T. 18 Section 3651, U.S. Code. Deft. advised of his right to appeal. Bail pending appeal fixed at $5,000. cash or surety, and to be posted by 12-18-75 at 5PM. Pollack,J.

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DATE	PROCEEDINGS	Date Ord Judgment
12-2-75	ERNEST R. MULLENAX (atty. present) Filed JUDGMENT # 75 [illegible] 2 yrs. on each of counts 1 to 51 incl. to run conc. with each other, and on condition that deft. be confined in a JAIL TYPE or TREATMENT TYPE institution for a period of 6 mons., the execution of the remainder of the sentence of imprisonment is hereby suspended and the deft. is placed on prob. for a period of 2 yrs., subject to the standing probation order of this Court. T. 18 U.S. Code 3651. -AND- FINED $10,000. on count 1. Fine to be paid, or deft. is to stand committed until the fine is paid or he is otherwise discharged according to law. Fine stayed pending appeal. Bail pending appeal fixed at $10,000. cash or surety. Deft. advised of his right to appeal. Pollack,J. issued all copies.	
12-3-75	E. Titlow-filed CJA 20 approval for payment of fees of atty. William Richman. Pollack,J.	
12-5-75	JAMES GALVIN JOINER (atty. present) Filed JUDGMENT # 75 [illegible] 2 yrs. impr. on count 1. Pur. to Sec. 4208(a)(2) of T. 18,U.S. Code, deft. shall become eligible for parole at such time as the Board of Parole may determine. -AND - FINED $2,500. fine to be paid or deft. is to stand committed until the fine is paid or he is otherwise discharged according to law. Counts 2 to 53 incl. are dismissed on motion of deft.'s counsel with the consent of the Govt. Deft. iscont'd. on present bail until 1-9-76 at 12 noon at which time he is to surrender himself to the Atty. Gen'l. by reporting to the Correction Institution to be designated by the Bureau of Prisons. Pollack,J. issued all copies.	
12-5-75	JOHN WELLS (atty. present) Filed JUDGMENT-Imposition of sentence on count 1 is suspended. Deft. is placed on Probation for a period of 2 yrs., subject to the standing probation order of this Court, and probation is to be terminated upon recommendation of the Probation Office . Counts 2 to 53 incl. are dismissed. Pollack,J. issued all copies.	
12-5-75	Filed Order for deft. J. Joiner to surrender for service of sentence on 1-9-76. Pollack,J.	
12-8-75	ERNEST R. MULLENAX- filed notice of appeal from judgment of 12-2-75. Mailed copies.U.S. Atty. & deft.	
12-10-75	Filed Deft. J. Boyd's notice of appeal from judgment of 12-2-75. Mailed copies to U.S. Atty. & deft.	
12-09-75	Filed deft. Robert E. Ford's notice of appeal from judgment of 12-2-75. mailed copies to U.S. Atty. & deft.	
12-10-75	E. Goodloe- Filed notice of appeal from judgment of 12-2-75. mailed copies.	
12-18-75	E. Titlow-filed documents forwarded by Magistrate Schreiber: docket entry sheet,appointment of counsel and financial affdvt.	

-cont'd. on next page-

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DATE	PROCEEDINGS	D Ju
12-11-75	Filed documents forwarded by Magistrate Raby: docket sheet, bond pending appeal.(deft. Robert Ford)	
12-16-75	Filed P.R.B. pending appeal in the sum of $5,000. secured by $5,000. cash. (deft. M.S. Knisely).	
12-22-75	Filed transcript of record of proceedings, dated Sep 16 1975.	
12-19-75	Boyd, J. Filed commitment & certified return, Def. delivered to MCC N.Y.C. 12-2-75	
12-19-75	Goodloe, E. Filed commitment & certified return, Def. delivered to MCC N.Y.C. 12-2-75	
12-19-75	Filed warrant for arrest of deft. E. Goodloe-service not indicated.	
12-19-75	Filed warrant for arrest of deft. Joe Boyd- returned unexecuted 11-11 Deft. in custody.	
12-3-75	Filed [illegible] bond 12-2-75	
12-3-75	Filed [illegible] bond 12-2-75	
12-23-75	Filed notice that the record on appeal has been certified and transmitted to the U.S.C.A.	
12-31-75	Filed notice that the suppl. record on appeal has been certified and transmitted to the U.S.C.A.	
01-12-76	M.S. Knisely-filed CJA 20 appointment of counsel Armende Lesser- 475 Fifth Avenue,N.Y.C. 10017 tele: (212) Mu 5-7908. Raby-Magistrate.	
01-12-76	M.S. Knisely-filed CJA 20 approval for payment of fees of atty. Pollack,J. issued all copies.	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

JOE TRUMAN BOYD,
JAMES CALVIN JOINER,
ERNEST DARWIN GOODLOE,
ROBERT E. FORD,
SELWYN WEBER,
EMERSON F. TITLOW,
ERNEST R. MULLENAX,
M. S. KNISELY,
HOWARD L. BROOKSHIRE,
WILLIAM WAYNE BARNETT,
MARVIN J. RAPPAPORT,
STANLEY SCHLEGER,
EDWARD VANASCO,
ALAN SEGAL,
ROGER BISSETT, and
JOHN WELLS,

Defendants.

INDICTMENT

75 Cr. 140

The Grand Jury charges:

Introduction

1. At all relevant times herein, Select Enterprises Inc. ("Select"), was a corporate shell without substantial assets the shares of which were not registered for trading as required with the United States Securities and Exchange Commission (SEC).

2. At all relevant times, the defendants SELWYN WEBER ("WEBER"), ROBERT E. FORD ("FORD"), ROGER BISSETT ("BISSETT"), and MARVIN J. RAPPAPORT ("RAPPAPORT") were attorneys admitted to practice law in their respective home States of Texas, Nevada and New York.

3. At all relevant times, the defendants WILLIAM WAYNE BARNETT ("BARNETT") and STANLEY SCHLEGER ("SCHLEGER") were public accountants, certified as such by the States of Texas and New York, respectively.

4. At all relevant times, the defendant HOWARD L. BROOKSHIRE ("BROOKSHIRE") was the President of the First Bank in Atoka, Atoka, Oklahoma.

5. At all relevant times, the defendants JOE TRUMAN BOYD ("BOYD"), JAMES CALVIN JOINER ("JOINER"), ERNEST DARWIN GOODLOE ("GOODLOE"), M. S. KNISLEY ("KNISLEY"), EMERSON F. TITLOW ("TITLOW"), ERNEST R. MULLENAX ("MULLENAX") and ALAN SEGAL ("SEGAL") were not regularly employed.

6. At all relevant times, the defendant JOHN WELLS was employed as a securities trader by Crown Trading Co., a Brooklyn, New York, securities broker-dealer registered as such with the S.E.C.

7. At all relevant times, the defendant EDWARD VANASCO ("VANASCO") was an undisclosed principle of Karen Co., a New York, New York, securities broker-dealer registered as such with the S.E.C.

8. This Introduction is hereby incorporated and realleged in each count of this Indictment as if fully set forth therein.

COUNT ONE

I. The Conspiracy

1. From on or about the 1st day of October, 1969, and continuously thereafter up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, BOYD, JOINER, GOODLOE, FORD, WEBER, TITLOW, MULLENAX, KNISELY, BROOKSHIRE, BARNETT, RAPPAPORT, SCHLEGER, VANASCO, SEGAL, BISSETT, and WELLS, the defendants and Joseph Azzarone, Fred Sherman, Stuart Shiffman and Michael Karfunkel, named herein as co-conspirators but not as defendants, and other persons to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to defraud the United States and to violate Sections 1001,

1341 and 1343 of Title 18, United States Code and Sections 77e,, 77q and 77x of Title 15, United States Code.

II. The Object of the Conspiracy

2. The object of the conspiracy was to obtain control of a "shell" corporation without any substantial assets, inflate artificially its price, and sell, pledge and distribute the shares at enormous profits to members of the public without providing material information required to be furnished by law.

III. The Means By Which The Conspiracy Was Carried Out

3. Among the means by which the defendants and their co-conspirators would and did carry out the conspiracy were the following:

(a) The defendant TITLOW, in an attempt to evade the registration requirements for the distribution of stock acquired stock of a corporation which stock had been originally distributed prior to 1933, and which stock under certain limited circumstances, not here applicable as the defendants well knew, need not have been registered. The defendant TITLOW then reactivated the theretofore dormant shell, caused its name to be changed to Select, and agreed to act as the agent for the transfer of its securities.

(b) The defendant BISSETT certified a false statement of the capital structure of Select and issued his opinion letter in respect of its verification and validity.

(c) The defendants KNISELY and WEBER became the President and Secretary, respectively, of Select.

(d) All of the defendants and co-conspirators agreed to distribute thousands of shares of Select stock to lenders, brokers and purchasers throughout the United States and abroad, and to aid one another in such distributions, without filing a registration statement with the S.E.C.

(e) The defendant BOYD transported thousands of unregistered Select securities in interstate commerce

from Reno, Nevada, to New York, New York, in order to create an artificial market in Select stock.

(f) The defendants GOODLOE, BOYD, and KNISELY placed "assets" of insubstantial value and unproven worth into Select.

(g) The defendants SEGAL, VANASCO and WELLS manipulated the price of Select stock by artificial means, including but not limited to the following:

(i) The defendants SEGAL and VANASCO, together with co-conspirator Azzarone, caused Karen Co. to become an apparent market marker in Select.

(ii) The defendant SEGAL, together with co-conspirator Karfunkel, caused Economic Planning to become an apparent market maker in Select.

(iii) The co-conspirator Karfunkel, distributed 1000 Select shares at a $8.00 per share while the price being quoted the public was approximately $16.00 per share.

(iv) The defendant SEGAL, through nominees, caused sham "crossed" trades or "wash" sales of Select securities at wholly artificial prices.

(v) The defendant WELLS caused Crown Trading Co. to become an apparent market maker in Select.

(h) The defendants BOYD, SEGAL, FORD, WEBER, BARNETT, KNISELY, RAPPAPORT, SCHLEGER, and VANASCO, together with co-conspirators Schiffman, Karfunkel, Azzarone and Sherman, made false, fictitious and fraudulent statements and representations, and made and used false writings and documents knowing the same to contain false, fictitious and fraudulent statements and entries, as to material facts in connection with the S.E.C. investigation of Select and to induce the S.E.C. not to suspend trading in the stock, and not to continue any such suspension, so that the defendants would be able to continue their fraudulent distributions. Such false statements included but were not limited to:

(i) fraudulently prepared and back-dated contracts between Select and others and fraudulently prepared corporate records including minutes, contracts, financial statements, transfer records and press releases;

(ii) false oral testimony and unsworn statements given to the S.E.C. concerning the above documents.

(i) The defendants BROOKSHIRE, BOYD, JOINER, SEGAL and MULLENAX, together with co-conspirators Schiffman and Sherman, sold, pledged and otherwise disposed of Select stock to lenders, factors and purchasers.

(j) The defendants and their conspirators fraudulently prepared Select financial statements which were false and misleading for at least the following reasons:

(i) The assets shown on the balance sheets had not, in fact, been transferred into the company as of the date of the balance sheet.

(ii) The value of the assets set forth on the balance sheets were fraudulently inflated.

IV. Overt Acts

4. In furtherance of the said conspiracy and to effect the objects thereof, the defendants and their co-conspirators committed the following overt acts among others in the Southern District of New York and elsewhere:

(1) In or about January 26, 1970, the defendant BOYD carried from Reno, Nevada, to New York, New York 1,036,603 shares of Select stock, delivered 100,000 shares to the defendant SEGAL in nominee names, and then locked the balance into a safe deposit box under their

control. The safe deposit box was locked by two different locks. BOYD and SEGAL each had one separate key and the box could not be opened without both keys.

(2) On or about February 4, 1970, co-conspirator Azzarone filed an application form with the National Quotation Bureau ("Pink Sheets") for the purpose of publishing artificial prices for Select stock.

(3) On or about February 11, 1970, the defendant SEGAL delivered 3,000 shares of Select stock to the President of Mann & Co.

(4) On or about February 26, 1970, the defendants RAPPAPORT, SEGAL, and SCHLEGER, together with co-conspirator Sherman, prepared, back-dated and delivered documents, purporting to be contracts evidencing true business activities of Select, to the S.E.C. through co-conspirator Azzarone and others.

(5) On or about March 1, 1970, the defendant SEGAL flew to Texas to obtain the signatures of the defendant KNISELY on the aforementioned back-dated contracts.

(6) On or about March 9, 1970, the defendants BOYD and WEBER delivered signed copies of the aforementioned backdated contracts to the S.E.C. at which time BOYD made perjurious statements as to such false documents.

(7) On or about March 28, 1970, the defendants BOYD, FORD, BARNETT and KNISELY fraudulently prepared, issued and caused the issuance of false and misleading certified financial reports to shareholders of Select and the trading public.

(8) On or about April 17, 1970, after the termination of the S.E.C. suspension of trading in Select stock and for the purpose of promoting continued distribution and trading in such stock on behalf of all defendants, the defendants BOYD and FORD supplied false and fraudulent information to the S.E.C.

(9) In or about the week ending May 9, 1970, the defendant WELLS provided false and misleading information as to the Select trading market to purchasers, banks, pledgees and other lenders as well as to the S.E.C.

Each of the mailings, telephone and telegraph usages alleged in Counts Two through Twenty-eight of this Indictment are repeated and realleged herein as overt acts.

V. Statutory Allegations

5. It was further a part of said conspiracy that the defendants would, in a matter within the jurisdiction of a department and agency of the United States, to wit, the S.E.C., knowingly and willfully falsify, conceal and cover up by tricks, schemes and devices material facts, make false, fictitious and fraudulent statements and representations, and make and use false writings and documents knowing the same to contain false, fictitious and fraudulent statements and entries, in violation of Title 18, United States Code, Section 1001.

6. It was further a part of said conspiracy that the defendants, having devised and intending to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, would unlawfully, wilfully and knowingly and for the purpose of executing said scheme and artifice and attempting so to do, cause to be delivered by mail according to the direction thereon, certain matter to be sent and delivered by the Postal Service in violation of Title 18, United States Code, Section 1341.

7. It was further a part of said conspiracy that the defendants, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises and for the purpose of executing such scheme and artifice, unlawfully, willfully and knowingly would transmit and cause to be transmitted by means of mail, wire, radio and

television communications in interstate commerce, writings, signs, signals, pictures and sounds in violation of Title 18, United States Code, Section 1343.

8. It was further a part of said conspiracy that the defendants would, unlawfully, willfully and knowingly, in the offer and sale of securities, namely Select stock, by the use of means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly (a) employ devices, schemes and artifices to defraud; (b) obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engage in transactions, practices and courses of business which operated and would operate as a fraud and deceit upon the purchasers and holders of collateral of Select securities in violation of Title 15, United States Code, Sections 77e and 77x.

9. It was a further part of said conspiracy that the defendants would, unlawfully, willfully and knowingly, directly and indirectly, make use of means and instruments of transportation and communication in interstate commerce and of the mails to sell and would carry and cause to be carried through the mails and in interstate commerce and by means and instruments of transportation for the purpose of sale and for delivery after sale, securities, namely Select stock, at a time when no registration statement was in effect with the United States Securities and Exchange Commission, in violation of Title 15, United States Code, Sections 77e and 77x.

(Title 18, United States Code, Section 371.)

COUNTS TWO THROUGH TWENTY-EIGHT

The Grand Jury further charges:

On or about the dates hereinafter set forth in Counts Two through Twenty-eight, in the Southern District of New York,

the defendants BOYD, JOINER, GOODLOE, FORD, WEBER, TITLOW, MULLENAX, KNISELY, BROOKSHIRE, BARNETT, RAPPAPORT, SCHLEGER, VANASCO, SEGAL, BISSETT, and WELLS, unlawfully, willfully and knowingly having devised and intending to devise a scheme and artifice to defraud the issuers of, purchasers of, and lenders against Select securities, and to obtain money and property by means of false and fraudulent pretenses, representations and promises, and for the purpose of executing said scheme and artifice and attempting so to do, did place and cause to be placed in post offices and authorized depositories for mail matter, take and receive therefrom, and did cause to be delivered by mail according to the directions thereon certain mail matter as hereinafter set forth to be sent and delivered by the Post Office Department, and did transmit and cause to be transmitted by means of wire and radio communications in interstate and foreign commerce, certain telegrams and telephone calls addressed as indicated.

2. The allegations contained in paragraphs 3(e), 3(h) and 3(j) of Count One of this Indictment are repeated and realleged as though fully set forth herein.

3. On or about the dates hereinafter set forth in Counts Two through Twenty-eight, in the Southern District of New York, and elsewhere, the defendants BOYD, JOINER, FORD, WEBER, GOODLOE, TITLOW, MULLENAX, KNISELY, BROOKSHIRE, BARNETT, RAPPAPORT, SCHLEGER, VANASCO, SEGAL, BISSETT, and WELLS unlawfully, willfully and knowingly did place and cause to be placed in post offices and authorized depositories for mail and did cause to be delivered by mail according to the directions thereon, and did transmit and cause to be transmitted by means of wire and radio communications in interstate commerce, writings, signs, signals, pictures and sounds, between the addresses and instruments as hereinafter set forth:

COUNT	DATE	ADDRESSOR	ADDRESSEE	MEANS
2	Feb. 10, 1970	Weis, Voisin, Cannon, Inc., Philips, Appeal & Walden	Morris Tesser 621 Brighton Beach Ave. Brooklyn, New York	Letter
3	Feb. 11, 1970	Francine Zahl	Nevada National Registrars 360 South Sierra Street Reno, Nevada	Letter
4	Feb. 16, 1970	Karen Co.	Select Enterprises Inc. Nevada National Registrars 360 South Sierra Street Reno, Nevada	Letter
5	Feb. 16, 1970	Nevada National Registrars, Inc.	Allen Grant 333 Seventh Avenue New York, New York	Letter
6	Feb. 16, 1970	Weis, Voisin, Cannon, Inc., Philips, Appeal & Walden	Lloyd C. Hafner and Doris, JT/WROS 8 Vansiclen Drive Poughkeepsie, New York	Letter
7	Feb. 20, 1970	First Devonshire Corporation	Nevada National Registrars 360 South Sierra Street Reno, Nevada	Letter
8	Feb. 27, 1970	Nevada National Registrars, Inc.	Orvis Brothers Thirty Broad Street New York, N.Y.	Letter
9	March 9, 1970	Nevada National Registrars, Inc.	Karen & Co. Two John Street New York, N.Y.	Letter
10	March 9, 1970	Nevada National Registrars, Inc.	First Devonshire Corp. 67 Broad Street New York, N.Y.	Letter
11	March 9, 1970	Orvis Brothers & Co.	Nevada Natl. Registrars 360 So. Sierra St. Reno, Nevada	Letter
12	March 16, 1970	First Devonshire Corporation	Nevada National Registrars 360 So. Sierra St. Reno, Nevada	Letter
13	March 20, 1970	Nevada National Registrars	Orvis Brothers & Co. Thirty Broad St. New York, N.Y.	Letter
14	March 25, 1970	214-742-1569	212-759-7000	Telephone
15	March 25, 1970	214-742-1569	212-867-8181	Telephone

COUNT	DATE	ADDRESSOR	ADDRESSEE	MEANS
16	March 26, 1970	Orvis Brothers & Co.	Nevada National Registrars 360 So. Sierra St. Reno, Nevada	Letter
17	March 26, 1970	214-749-9951	212-867-8181	Telephone
18	March 26, 1970	214-742-1569	212-759-7000	Telephone
19	March 28, 1970	915-683-5561	516-536-6153	Telephone
20	April 7, 1970	Nevada National Registrars, Inc.	Orvis Brothers & Co. Thirty Broad St. New York, N.Y.	Letter
21	April 8, 1970	915-684-4215	212-759-7000	Telephone
22	April 13, 1970	Nevada National Registrars	First Devonshire Corporation 67 Broad Street New York, N.Y.	Letter
23	April 13, 1970	214-742-1569	212-759-7000	Telephone
24	April 14, 1970	214-742-1569	212-759-7000	Telephone
25	April 27, 1970	214-742-1569	212-759-7000	Telephone
26	April 29, 1970	303-892-5922	212-349-7210	Telephone
27	May 8, 1970	205-353-0521	212-349-7210	Telephone
28	June 8, 1970	Karen Co.	Florence Glantz 750-43 72nd St. Flushing, N.Y.	Letter

(Title 18, United States Code, Sections 1341 and 1343.)

COUNTS TWENTY-NINE THROUGH FORTY

The Grand Jury further charges:

1. From on or about the 10th day of February, 1970, and continuously thereafter up to and including the date of the filing of this Indictment, in the Southern District of New York, BOYD, JOINER, GOODLOE, FORD, WEBER, TITLOW, MULLENAX, KNISELY, BROOKSHIRE, BARNETT, RAPPAPORT, SCHLEGER, VANASCO, SEGAL, BISSETT, and WELLS, the defendants, unlawfully, willfully and knowingly in the offer and sale of securities, to wit, shares of Select, by the use of means and instruments of transportation and communications in interstate commerce and by use of the mails, directly and indirectly, (a) did employ devices, schemes and

artifices to defraud; (b) did obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) did engage in transactions, practices and courses of business which would operate and did operate as a fraud and deceit upon the purchasers of said securities.

2. The allegations contained in paragraphs 3(g), 3(h) and 3(j) of Count One of this Indictment are repeated and realleged as though fully set forth herein.

3. On or about the dates hereinafter set forth in Counts Twenty-nine through Forty, in the Southern District of New York, the defendants, BOYD, JOINER, GOODLOE, FORD, WEBER, TITLOW, MULLENAX, KNISELY, BROOKSHIRE, BARNETT, RAPPAPORT, SCHLEGER, VANASCO, SEGAL, BISSETT, and WELLS, unlawfully, willfully and knowingly did use and cause to be used, means and instruments of transportation and communication in interstate commerce and the mails, pursuant to and in furtherance of the scheme alleged in these Counts Twenty-nine through Forty, in connection with the following sales, pledges and dispositions of Select stock:

COUNT	DATE	PURCHASER, LENDER, ETC.	NUMBER OF SHARES
29	Feb. 10, 1970	Morris Tesser	100
30	Feb. 11, 1970	Trade Bank and Trust Co. New York, N.Y.	10,000
31	Feb. 11, 1970	Allen Grant New York, N.Y.	1,000
32	Feb. 11, 1970	Mann & Co. Medford, Mass.	3,000
33	Feb. 19, 1970	Central State Bank Brooklyn, N.Y.	8,000
34	March 5, 1970	Forsite Fund New York, N.Y.	800
35	March 9, 1970	Fort Worth National Bank Fort Worth, Texas	10,000

COUNT	DATE	PURCHASER, LENDER, ETC.	NUMBER OF SHARES
36	April 10, 1970	American Founders Life Insurance Co. Austin, Texas	1,000
37	May 8, 1970	Essex Securities Denver, Colorado	200
38	May 8, 1970	State National Bank Decatur, Alabama	20,000
39	May 9, 1970	Home State Bank McPherson, Kansas	10,000
40	July 1, 1970	Town and Country Business Trust Witchita, Kansas	10,000

(Title 15, United States Code, Sections 77q and 77x.)

COUNTS FORTY-ONE THROUGH FIFTY-ONE

The Grand Jury further charges:

On or about the dates hereinafter set forth in Counts Forty-one through Fifty-one, in the Southern District of New York, the defendants BOYD, JOINER, GOODLOE, FORD, WEBER, TITLOW, MULLENAX, KNISLEY, BROOKSHIRE, BARNETT, RAPPAPORT, SCHLEGER, VANASCO, SEGAL, BISSETT, and WELLS, unlawfully, willfully and knowingly, directly and indirectly, made use of means and instruments of transportation and communication in interstate commerce and of the mails to sell Select securities, as hereinafter set forth, no registration statement as to such securities being in effect with the S.E.C.:

COUNT	DATE	PURCHASER, LENDER, ETC.	NUMBER OF SHARES
41	Feb. 10, 1970	Morris Tesser	100
42	Feb. 11, 1970	Trade Bank and Trust Co.	10,000
43	Feb. 11, 1970	Mann & Co.	3,000
44	Feb. 19, 1970	Central State Bank	8,000
45	March 5, 1970	Forsite Fund	800
46	March 9, 1970	Forth Worth National Bank	10,000
47	April 10, 1970	American Founders Life. Ins. Co.	1,000

COUNT	DATE	PURCHASER, LENDER, ETC.	NUMBER OF SHARES
48	May 8, 1970	Essex Securities	200
49	May 8, 1970	State National Bank	20,000
50	May 9, 1970	Home State Bank	10,000
51	July 1, 1970	Town and Country Business Trust	10,000

(Title 15, United States Code, Sections 77e and 77x.)

COUNTS FIFTY-TWO AND FIFTY-THREE

The Grand Jury further charges:

On or about the dates hereinafter set forth in Counts Fifty-two and Fifty-three, in the Southern District of New York, the defendants BOYD, JOINER, GOODLOE, FORD, WEBER, TITLOW, MULLENAX, KNISELY, BROOKSHIRE, BARNETT, RAPPAPORT, SCHLEGER, VANACOR, SEGAL, BISSETT and WELLS, did, in a matter within the jurisdiction of a department and agency of the United States, to wit, the S.E.C., unlawfully, willfully and knowingly, make false, ficititious and fraudulent statements and representations and did make and use false writings and documents knowing the same to contain false, fictitious and fraudulent statements and entries hereinafter specified in Counts 52 and 53, in toto and in, at least, the following particulars, to wit: (1) back-dating (2) unauthorized signatures; (3) non-existent exhibits and attachments; (4) unauthorized warranties and representations as to third persons; and (5) misdescriptions of the value of Select shares.

COUNT	DATE	DOCUMENT
52	February 26, 1970	"Dx (Schneiderman) 2 for id."
53	February 26, 1970	"Div. Ex. Azzarone 3"

(Title 18, United States Code, Section 1001.)

FOREMAN

PAUL J. CURRAN
United States Attorney

A 30

USA-33s-187
Rev. 2/4/66

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA :

-v- :

BOMB IT AL : 74 CR 140 (MP)

- x

U.S. DISTRICT COURT
FILED
MAY 16 1975
S.D. OF N.Y.

TO: RAYMOND F. BURGHARDT, Clerk
United States District Court
Southern District of New York

S I R :

You are hereby notified that I appear for

ERNEST R MOLLENAX

the defendant in the above-entitled action.

Dated: New York, New York
MAY 16, 1975

Attorney for Defendant

ROSENBERG-ROSENBERG & ROCKMAN
600 GARDEN CITY PLAZA
GARDEN CITY, N.Y. 11530
516 - 248-4300

Telephone Numbers

COPY RECEIVED
PAUL J. CURRAN
MAY 16 1975
U.S. ATTORNEY
SO. DIST. OF N.Y.

(46)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
- v -	:	
JOE TRUMAN BOYD, JAMES CALVIN JOINER, ERNEST DARWIN GOODLOE, ROBERT E. FORD, SELWYN WEBER, EMERSON F. TITLOW, ERNEST R. MULLENAX, M. S. KNISELEY, HOWARD L. BROOKSHIRE, WILLIAM WAYNE BARNETT, MARVIN J. RAPPAPORT, STANLEY SCHLEGER, EDWARD VANASCO, ALAN SEGAL, ROGER BISSETT, and JOHN WELLS,	:	75 Cr. 140 (MP)
	:	NOTICE OF MOTION
Defendants.	:	

S I R :

PLEASE TAKE NOTICE that upon the indictment, the affidavit of ERNEST R. MULLENAX, sworn to the 24th day of June, 1975, and upon all the papers and proceedings heretofore had herein, a motion will be made before HON. MILTON POLLACK, United States District Judge, at the Court House, located at Foley Square, City and State of New York, at a time and place to be fixed by the Court for an order:

A

Pursuant to Rule 14 of the Federal Rules of Criminal Procedure severing the defendant Mullenax from the other

named defendants on the ground that a joint trial would be prejudicial to him and contrary to his due process right to essential fairness;

B

Dismissing counts Fifty Two and Fifty Three of the indictment against the defendant Mullenax pursuant to Rule 12 of the Federal Rules of Criminal Procedure on the ground that an in camera inspection of the Grand Jury minutes by the Court will disclose that as a matter of law the charges in the aforesaid counts were improperly lodged against him and were not supported by sufficient evidence;

C

Pursuant to Rules 7(c) and 12(b) (2) of the Federal Rules of Criminal Procedure and the Fifth and Sixth amendments to the Constitution of the United States dismissing Counts Twenty Nine to Forty inclusive of the indictment against the defendant Mullenax because the aforesaid Counts of the indictment are defective in failing to set forth the essential facts constituting the offense charged, in failing to apprise the defendant Mullenax with reasonable certainty of the accusation he must meet, and because the allegations fail to support a charge under 15 USC 77q and 77x against him;

D

Pursuant to Rule 12(b) of the Federal Rules of Criminal Procedure dismissing Counts Twenty Nine through Forty of the indictment on the ground that the counts are

multiplicitous exposing the defendant Mullenax to double jeopardy in violation of his right to due process or, in the alternative, ordering the counts consolidated into a single count;

E

Pursuant to Rule 12 of the Federal Rules of Criminal Procedure dismissing Counts Forty One to Fifty One inclusive of the indictment against the defendant Mullenax on the ground that the allegations fail to charge a crime under 15 USC 77e against him;

F

Pursuant to Rule 7(d) of the Federal Rules of Criminal Procedure striking the "Introduction" portion of the indictment as surplusage;

G

Pursuant to Rule 7(c) and 12(b)(2) of the Federal Rules of Criminal Procedure and the Fifth and Sixth Amendments of the Constitution of the United States dismissing Counts Two to Twenty Eight inclusive of the indictment against the defendant Mullenax on the grounds that these counts do not set forth the requisite fraudulent scheme in that the counts fail to set forth the essential facts constituting the offense charged, in failing to apprise the defendant Mullenax with reasonable certainty of the accusation he must meet, and the counts fail to support a charge under 18 USC 1341 and 1343 against him;

H

Pursuant to Rule 12(b) of the Federal Rules of Criminal Procedure dismissing Counts Two through Twenty Eight of the indictment on the ground that the counts are multiplicitous exposing the defendant Mullenax to double jeopardy in violation of his right to due process or, in the alternative, ordering the counts consolidated into a single count.

I

Dismissing certain counts of the indictment against the defendant Mullenax pursuant to Rule 12 of the Federal Rules of Criminal Procedure on the ground that the pledge of stock does not constitute a "sale" of a security for purposes of 15 USC 77e and 77q and consequently the allegations in the counts to be ascertained by the Court to have involved the pledge of Select stock as the basis of a charge under the securities laws must be dismissed;

J

Pursuant to Rules 16(a) and 16(b) of the Federal Rules of Criminal Procedure compelling the prosecution to make available to Mullenax to examine, inspect and copy:

> a) Any and all written or recorded statements or alleged confessions made by the defendants or any of them or by any agent or representative of any of the defendants or claimed co-conspirators, including but not limited to summaries, notes, or copies thereof, including portions of any Government reportsor memoranda

insofar as they contain statements of the defendants or their claimed co-conspirators, their agents, or representatives' statements or summaries of such statements regardless to whom such statements were made.

b) Any and all electronic or mechanical recordings, film or transcripts of any conversation or surveillance of any defendant or claimed co-conspirator, and all the electronic, mechanical equipment and paraphernalia utilized in overhearing, monitoring, recording of defendants' or co-conspirators' conversations and/or surveillance.

c) All books, records, documents, correspondence, memoranda, evidence or tangible objects which were obtained or are in the possession or control or may with due diligence be obtained by the Government which relate to the allegations or charges contained in the indictment herein including, but not limited to books, documents, papers and other writings relating to the subject matter of the indictment obtained by the Government from defendants or others by seizure or process including those used before the Grand Jury or to be used as evidence; responses to questionnaires; matter and material alleged to have been delivered by mail; confirmation slips; transaction slips; correspondence in connection with the offer and sale of Select stock; the envelopes containing material alleged to have been mailed; and all other papers and documents used by the Securities and Exchange Commission in connection with its investigations and all orders, reports and official documents issued by the Commission in connection with such investigation; transcripts of testimony before the Securities and Exchange Commission taken both from prospective Government witnesses and from persons other than prospective witnesses; transcripts of testimony before any law enforcement

agency or Government or other agency taken in connection with the instant criminal prosecution and all books, records, papers and other writings of Select Enterprises, Inc. or its predecessor corporation including but not limited to journals, receipt and disbursement records, minutes of stockholders meetings, stock ledgers, stock transfer records, stock certificate books, financial statements, cancelled checks, bank statements, contracts, agreements, evidence of indebtedness and all incoming and outgoing correspondence, and all stock certificates of Select pledged relating to the indictment with all documentation papers, writings or otherwise relating to the pledge of Select stock, and all purported false and fraudulent statements referred to by the indictment, including but not limited to those made to the S.E.C., those of capital structure, all financial statements which were purportedly false and misleading, all false and material writings made to purchasers, banks, pledgees and other lenders as well as to the S.E.C.

K

Pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure for a bill of particulars, as follows:

1) State if it will be claimed by the prosecution that the defendant Mullenax was an officer or an employee of Select Enterprises, Inc., and if so, state the dates and the capacity in which he was employed.

2) State if it will be claimed by the prosecution that the defendant Mullenax was in any way or form employed in a professional capacity or otherwise by Select Enterprises, Inc., and if so, state the dates and the capacity in which he was employed.

3) State if it will be claimed by the prosecution that the defendant Mullenax was in any way connected with Select Enterprises, Inc., and if so, set forth with specificity the details of such relationship particularizing the date such relationship began.

4) State whether it will be claimed by the prosecution that the defendant Mullenax ever had an interest direct, nominal or otherwise in the ownership or stock of Select Enterprises, Inc., and the date of such interest, if any, and set forth the manner and means such interest was acquired.

5) State whether it will be claimed that the defendant sold any shares of stock in Select Enterprises, Inc. pursuant to the alleged scheme to defraud, if so, state when and to whom.

6) State whether it will be claimed that the defendant Mullenax took part in the alleged manipulation of the stock in Select Enterprises, Inc., and if so, state with specificity his connection with the claimed manipulation of the stock.

7) State whether it will be claimed that the defendant Mullenax knew that Select Enterprises, Inc. was purportedly a corporate shell without substantial assets the shares of which were not registered for trading as required.

8) State whether it will be claimed that the defendant Mullenax pledged any stock of Select Enterprises, Inc., giving the dates and to whom such stock was pledged, and all other details of the alleged transaction, including but not limited to the consideration purportedly involved.

9) State whether it will be claimed that the defendant Mullenax otherwise distributed or disposed of Select stock, and if so, set forth with specificity the details.

10) State if it will be claimed that the defendant Mullenax took any part in the acquisition of Goldfield Candelara, Inc. and its change in name to Select Enterprises, Inc.

11) State if it will be claimed that the defendant Mullenax received any interest, direct or otherwise, from the original issue of stock in Select Enterprises, Inc.

12) State if it will be claimed that the defendant Mullenax took any part in the creation of Select Enterprises, Inc.

13) State whether it is claimed that the defendant Mullenax knew the shares of Select Enterprises, Inc. were not registered for trading and were not fully tradeable in the open market.

14) State when the defendant Bissett certified an alleged false statement of the capital structure of Select.

15) State with specificity the details and particulars such statement of the capital structure of Select is claimed to be false.

16) State whether it is claimed that the defendant Mullenax knew of the alleged falsity of the statement of capital structure of Select certified to by the defendant Bissett.

17a) State whether it is claimed that the defendant Mullenax knew that the "assets" placed into Select by Goodloe, Boyd, and Kniseley were of alleged insubstantial value and unproven worth.

b) State the date(s) such "assets" were placed into assets giving full particulars of the "assets" and the reason(s) it is claimed they were of insubstantial value and unproven worth.

18a) State with specificity which financial statements of Select it is claimed were fraudulently prepared, and set forth with specificity the manner it is claimed the financial statements were false; the date of the financial statements, and what part the defendant Mullenax took part in its preparation, if any.

b) State whether it is claimed that at the time the financial statements were prepared the defendant Mullenax knew a) that the assets shown on the balance sheets had not, in fact, been transferred into the company as of the date of the balance sheet. Also set forth if such assets were transferred into Select and set forth the date and b) the value of the assets on the balance sheets were purportedly fraudulently inflated.

19) Set forth whether it is claimed the defendant Mullenax knew that the S.E.C. on or about April 2, 1970 suspended trading in Select, and if so, set forth the approximate date of such knowledge on the part of the defendant Mullenax.

20) Set forth whether it is claimed the defendant knew that the defendants Boyd and Ford purportedly supplied false and fraudulent information to the S.E.C. to promote continued distribution and trading in Select.

21a) State whether it is claimed that on or about May 9, 1970 the defendant Wells provided purportedly false and misleading information as to the Select trading market to purchasers, banks, pledgees and other lenders as well as to the S.E.C.

b) State with specificity the details it is claimed such information was false and misleading.

c) Itemize and set forth the names of all purchasers, banks, pledgees and other lenders to whom this alleged false and misleading information was supplied.

d) Set forth whether it will be claimed the defendant Mullenax knew that such information at that time was false and misleading.

22) State the approximate date it is claimed the defendant Mullenax entered into the conspiracy set forth in Count One of the indictment.

23) State the names and addresses of all co-conspirators not specifically identified by name in the indictment who are known to the prosecution or who in the future with due diligence may become known to it.

24) State the place where and the time when each defendant and co-conspirator entered into the conspiracy.

25) State the names and addresses of all persons present when the alleged conspiracy was formed.

26) With respect to Counts Two through Twenty Eight, set forth with specificity the alleged devices, schemes and artifices to defraud.

27) State whether it is claimed that the purportedly false and fraudulent statement of financial condition of Select was the device, scheme and artifice to defraud.

28) State whether the alleged false and fraudulent statement of financial condition of Select was the "letter(s)" mailed and if so, whether it was in execution of the scheme and artifice of defendants in connection with the purchase or sale of Select stock, and if not, identify with specifities the "certain mail matter" mailed in purported furtherance of the alleged scheme of fraud.

29) Set forth with specificity the contents of the "telephone (calls)" and the manner the telephone was employed in purported furtherance of the alleged scheme of fraud.

30) Is it claimed that defendant Mullenax caused "letter(s)" to be sent and "telephone (calls)" to be made on each of the dates set forth in Counts Two to Twenty Eight inclusive.

31) With respect to Counts Twenty Nine through Forty, set forth the alleged devices schemes and artifices to defraud.

32) Set forth the acts, practices and courses of business while operated as a fraud.

33) State the untrue statements of material facts and omissions made, and state where and in what mean such statements were made and by whom.

34) Set forth the actual facts as opposed to the alleged false statements.

35) Set forth the facts necessary to make the statements not misleading.

36) Set forth the manner in which the alleged false statements were material, and to whom they were material.

37) Set forth with specific detail the manner the alleged false statements operated or a fraud against the material interests of "purchaser(s), lender(s)" of Select stock.

38) State whether it is claimed by the prosecution that the defendant Mullenax had knowledge of the purportedly false statements and scheme of fraud, stating when the defendant Mullenax acquired such knowledge.

39) State whether the prosecutors will claim that the defendant Mullenax ever met or had direct contact with each of the named co-defendants and, if so, the date(s) and purpose(s) of such meeting(s) and contact(s).

40) Is it claimed that the shares listed in each of Counts Twenty Nine through Forty were mailed to the named "Purchaser(s), Lender(s), Etc."

41) Which of Counts Twenty Nine through Forty deal with the pledge of Select stock.

42) Which of Counts Twenty Nine through Forty deal with the sale of Select stock.

43) Which of Counts Twenty Nine through Forty deal with "other disposition" of Select stock, and set forth the manner of "other disposition".

44) Set forth with specifity the items that were mailed with respect to each of Counts Twenty Nine to Forty inclusive, and state

its connection with the alleged scheme of fraud of defendants.

45) State where it is first claimed the defendant Mullenax first took part in an activity pursuant to the alleged scheme of fraud.

46) With respect to Counts Forty One through Fifty One set forth the items that were mailed with respect to each of the aforesaid counts, and state the items' connection with the alleged scheme of fraud of the defendants, and when the defendant Mullenax is claimed to have mailed the items or the manner in which he caused them to be mailed.

47) Is it claimed that the defendant Mullenax knew that a registration statement as to Select securities should have been in effect with the S.E.C.

48) With respect to Counts Fifty Two and Fifty Three, set forth the manner it is claimed the defendant Mullenax on February 26, 1970 was connected with the scheme to defraud and the filing and making of false fraudulent and fictitious statements with the S.E.C.

49) Is it claimed that the defendant Mullenax knew the statements and representation were false in the manner set forth in Counts Fifty Two and Fifty Three.

50) Is it claimed that the defendant Mullenax made or caused to be made or signed the documents specified in Counts Fifty Two and Fifty Three and if so, set forth the details.

51) State whether it will be claimed that the defendant Mullenax was an issuer, underwriter or dealer in the securities of Select Enterprises, Inc., and if so, the basis of such claim.

52) State whether it will be claimed that the defendant Mullenax received any of the proceeds of the alleged manipulations of the Select stock.

53) State if it will be claimed by the prosecution that the defendant Mullenax was an officer or an employee of either Crown Trading Company or Karen Company and, if so, state the dates and capacity in which he was employed.

54) State if it will be claimed by the prosecution that the defendant Mullenax was in any way or form employed in a professional capacity by Crown Trading Company or Karen Company and, if so, state the dates and capacity in which he was employed.

55) State if it will be claimed by the prosecution that the defendant Mullenax was in any way connected with Crown Trading Company or Karen Company and, if so, state forth with specificities the details of such relationship.

56) State if it will be claimed by the prosecution that the defendant Mullenax was in any way connected with any of the companies acquired by Select whose assets were proportedly inflated in the financial statement of Select and, if so, state forth with specificities the details of such relationship.

L

Directing the prosecution to deliver to the defendants all evidence favorable to them under the authority of Brady v. Maryland, 373 U.S. 83 (1963)

M

Permitting the defendant Mullenax to join in each and every motion made in behalf of any of the co-defendants herein to the extent applicable and reserving him the right to make such other and further motions as may be necessary in the interests of justice,

And for such other and further relief as to the Court may seem just and proper.

Dated, Garden City,
New York
June 24, 1975

Yours, etc.,

JOSEPH B. EHRLICH
ROSENBERG, ROSENBERG & ROCKMAN
Attorneys for Defendant
Ernest R. Mullenax
200 Garden City Plaza
Garden City, N.Y. 11530

To:

PAUL J. CURRAN, ESQ.
United States Attorney
United States Court House
Foley Square
New York, N.Y. 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA,

v.

JOE TRUMAN BOYD,
JAMES CALVIN JOINER,
ERNEST DARWIN GOODLOF,
ROBERT E. FORD,
SELWYN WEBER,
EMERSON F. TITLOW,
ERNEST R. MULLENAX,
M. S. KNISELEY,
HOWARD L. BROOKSHIRE,
WILLIAM WAYNE BARNETT,
MARVIN J. RAPPAPORT,
STANLEY SCHLEGER,
EDWARD VANASCO,
ALAN SEGAL,
ROGER BISSETT, and
JOHN WELLS,

75 Cr. 140 (MP)

Defendants.

----------x

STATE OF NEW YORK)
) SS.:
COUNTY OF NASSAU)

ERNEST R. MULLENAX, being duly sworn, deposes and says:

I am one of the defendants herein. I make this affidavit in support of my motions and in particular in further support of my motion for a severance and a separate trial from the other defendants.

I am fifty-five years old and was born on December 21, 1919 in Nebraska City, Nebraska. I am married and have four children: two daughters and two sons. I practiced chiropractic on a continuous basis from 1949 to 1965, and am licensed to practice the profession in three states-Missouri, Kansas, Oklahoma-and in the Commonwealth of Puerto Rico. In 1963, among other awards, I was designated "Chiropractor of the Year" for Missouri at the Golden Anniversary Convention of the

Missouri State Chiropractors' Association.

I have read the instant indictment and particularly note the statement that I was not regularly employed at the relevant times with which the indictment addresses itself.

In this regard, I note to the Court that I was continuously employed and received compensation from several companies wherein I was retained in a professional sales capacity. I note that after I sold my chiropractic practice in 1965, I subsequently became a Vice-President of a major Mid-West life insurance company where among other utilizations of my talents, I trained 200 sales and management personnel. From this basis, I became involved in several business interests and I can unequivocally state to the Court that I have never once been accused, charged or convicted of any crime or misconduct of any kind.

I was never an officer or director of Select Enterprises, Inc. and never did participate in any way or manner in the preparation of any financial statement of the company. Moreover, I had no connection whatsoever with the acquisition of Goldfield-Candelara or its change of name to Select. I did not receive any shares of Select stock in the original issue of the company. I have read the allegations set forth in the indictment and unequivocally state that I never participated in the manipulation of the securities of Select Enterprises, Inc.

I have looked over material portions of the S.E.C. proceedings and can fully represent that I had no connection with Select Enterprises, Inc. with regard to the properties Select acquired where it is claimed that the values of said properties were purportedly inflated in the financial statements of Select in January and March of 1970.

My connection with the allegations of the indictment is remote and a trial with the other co-defendants would be unfair and prejudicial. In the interests of justice, I ask

that the Court give serious credence to the motion for severance. I have looked over discovery material, and the S.E.C. proceedings and believe that such documentation evidences to the Court that I have no place being tried with the other named co-defendants.

In connection herewith, in order to avoid duplication, I incorporate as though fully set forth the Memorandum of Law submitted simultaneously herewith.

Ernest R. Mullenax
ERNEST R. MULLENAX

Sworn to before me this
24th day of June, 1975.

Frieda Taylor
Notary Public

FRIEDA TAYLOR
Notary Public, State of New York
No. 30-8283300
Qualified in Nassau County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA,

v.

JOE TRUMAN BOYD,
JAMES CALVIN JOINER,
ERNEST DARWIN GOODLOF,
ROBERT E. FORD,
SELWYN WEBER,
EMERSON F. TITLOW,
ERNEST R. MULLENAX,
M. S. KNISELEY,
HOWARD L. BROOKSHIRE,
WILLIAM WAYNE BARNETT,
MARVIN J. RAPPAPORT,
STANLEY SCHLEGER,
EDWARD VANASCO,
ALAN SEGAL,
ROGER BISSETT, and
JOHN WELLS,

Defendants.

75 Cr. 140 (MP)

----------x

MEMORANDUM OF LAW ON BEHALF OF
DEFENDANT, ERNEST R. MULLENAX

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Attorneys for Defendant, Mullenax
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(516)248-4300

JOSEPH B. EHRLICH,
of Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA,

v.

JOE TRUMAN BOYD,
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MARVIN J. RAPPAPORT,
STANLEY SCHLEGER,
EDWARD VANASCO,
ALAN SEGAL,
ROGER BISSETT, and
JOHN WELLS,

75 Cr. 140 (MP)

Defendants.

----------x

MEMORANDUM OF LAW ON BEHALF OF DEFENDANT,
ERNEST R. MULLENAX

INTRODUCTION

On May 30, 1975, the defendant Ernest R. Mullenax was arraigned and pleaded not guilty to the Fifty-Three count indictment filed in this Court on February 10, 1975.

The indictment charges sixteen defendants with violations of the securities laws and mail and wire fraud.

Count One of the indictment purports to allege a conspiracy to violate Sections 1001, 1341 and 1343 of Title 18, United States Code and Sections 77e, 77q and 77x of Title 15, United States Code. The Count sets forth several headings which purport to describe the allegations as "The Conspiracy", "The Object of the Conspiracy", "The Means By Which The Conspiracy Was Carried Out", the "Overt Acts", and the "Statutory Allegations".

The remaining Counts charge the substantive offenses. Counts Two through Twenty-Eight purport to charge defendants with mail and wire fraud, and set forth that "letters and "telephone (calls)" were made by "addressor(s)" to "addressee(s)" in furtherance of a scheme of alleged fraud of the defendants. The counts manifestly fail to set forth the essential facts and particularize the offense as set forth in Points VII, infra. Counts Twenty-Nine through Forty share the same infirmity: see Point III, infra. These Counts purport to charge securities fraud to "purchaser(s),lender(s), etc." and clearly do not delineate the offense as required by Rule 7(c) of the Federal Rules of Criminal Procedure and the mandate of the High Court in Russell v. United States, 369 U.S. 744 (1962).

The allegations in Counts Forty-One through Fifty-One purport to charge a crime proscribed by 15 USC 77e and

77x.

Finally, Counts Fifty-Two and Fifty-Three charge the substantive offense under 18 USC 1001 arising out of documentation filed in February, 1970 with the S.E.C. which purportedly related to Select.

POINT I

THE DEFENDANT MULLENAX SHOULD BE SEVERED FROM THE OTHER NAMED DEFENDANTS.

The defendant Mullenax requests a severance from the other named defendants pursuant to Rule 14 of the Federal Rules of Criminal Procedure. Unless such severance is granted, undue prejudice will result to him.

Inspection of the documentation the prosecution anticipates offering in the course of trial, evidence that the name of Dr. Mullenax is not mentioned once therein. Additionally, a reading of the court proceedings in Securities and Exchange Commission v. Select Enterprises, Inc., et al., 70 Civ. 3795, again evidences that the name of Dr. Mullenax is not once mentioned during proceedings involving the facts which form the basis of the instant indictment.

Consequently, the presentation of evidence against the other named defendants will condemn Dr. Mullenax in violation of his due process right to essential fairness and impede his defense. See United States v. Kelley, 349 F2d 720, 759 (CA2, 1965), cert. denied 384 U.S. 947; Gregory v. United States, 369 F2d 185, 189-190 (CADC,1966).

In this regard, it is noted that Count One of the Indictment charging the conspiracy, charges the de-

fendants with confederation to violate Sections 1001, 1341 and 1343 of Title 18, United States Code and Sections 77e, 77q and 77x of Title 15, United States Code. However, the Grand Jury in paragraph 3(h) failed to set forth Dr. Mullenax's name in the material allegation with respect to 18 United States Code 1001:

> "(h) The defendants BOYD, SEGAL, FORD, WEBER, BARNETT, KNISELY, RAPPAPORT, SCHLEGER, and VANASCO, together with co-conspirators Schiffman, Karfunkel, Azzarone and Sherman, made false, fictitious and fraudulent statements and representations, and made and used false writings and documents knowing the same to contain false, fictitious and fraudulent statements and entries, as to material facts in connection with the S.E.C. investigation of Select and to induce the S.E.C. not to suspend trading in the stock, and not to continue any such suspension, so that the defendants would be able to continue their fraudulent distributions. Such false statements included but were not limited to:
>
> (i) fraudulently prepared and back-dated contracts between Select and others and fraudulently prepared corporate records including minutes, contracts, financial statements, transfer records and press releases;
>
> (ii) false oral testimony and unsworn statements given to the S.E.C. concerning the above documents."

It is respectfully submitted that an in camera inspection of the Grand Jury minutes will disclose that a trial with the co-defendants will not permit Dr. Mullenax a fair trial inasmuch as the jury will be confused and will

have difficulty in separating the case against Dr. Mullenax from that presented against his co-defendants. See affidavit submitted on June 6, 1975, to the Court on behalf of Dr. Mullenax in opposition to the prosecution's motion for consolidation of the instant indictment with Indictment 75 Cr. 346. A copy of the affidavit is attached as Exhibit "A". Confusion will result to the jury in considering Count One, for the reason stated, and in sifting the minimal case against Dr. Mullenax, which his counsel believe will be at best highly circumstantial, from the evidence against the other defendants. The burden upon the jury will be great, and for all practical extents and purposes will result in an effective denial of due process to the defendant Mullenax, in that it will be difficult to imagine his having received a fair trial. In this regard, it is significantly noted that several of the defendants continue to appear pro se, and their involvement in the trial on such a basis can only add to the confusion of the jury and to the further detriment of the defendant Mullenax.

The defendant Mullenax has been involved in several of business interests over the past ten years and never once has been charged nor convicted of any crime or misconduct of any kind. He is a licensed chiropractor in four states, and has both an unblemished record and

reputation. Again, a review of the materials offered to date by the prosecution fail to show any connection of the defendant Mullenax with the creation of Select Enterprises, Inc. or with any other company set forth in the materials inspected.

Although it is accepted that a severance will cause both the Government and the Court additional expense and time, to cast Dr. Mullenax with those involved in the S.E.C. proceedings would be grossly unfair for the reasons stated. It is strenuously submitted that under the framework of our judicial system, and in consideration of essential procedural due process, that the defendant Mullenax be granted a severance from the other named defendants.

A separate trial is essential under the due process clause of the Fifth Amendment to the Constitution of the United States to afford Dr. Mullenax a fair trial.

POINT II

AFTER IN CAMERA INSPECTION OF THE GRAND JURY MINUTES, THE COURT SHOULD DISMISS COUNTS FIFTY-TWO AND FIFTY-THREE OF THE INDICTMENT.

Counts Fifty-Two and Fifty-Three of the instant indictment charge Dr. Mullenax,with other named defendants with the substantive offense under Section 1001, Title 18 United States Code. The counts in essence charge that Dr. Mullenax made false, fictitious and fraudulent statements to the S.E.C. The allegations of Counts Fifty-Two and Fifty-Three, however, are directly inconsistent with paragraph 3(h) of Count One, set forth on page 5 herein, and consequently requires in camera inspection of the Grand Jury minutes by the court to ascertain,as a matter of law, whether counts Fifty-Two and Fifty-Three are properly applicable and properly charge Dr. Mullenax with violation of 18 United States Code, Section 1001. It is submitted that the court will find absolutely no evidence whatsoever warranting the inclusion of Dr. Mullenax's name in Counts Fifty-Two and Fifty-Three. Therefore, the counts charging him with violation of 18 U.S.C. 1001 should be dismissed.

POINT III

COUNTS TWENTY-NINE THROUGH FORTY ARE CONSTITUTIONALLY DEFECTIVE AND SHOULD BE DISMISSED.

The gist of the crime under 15 United States Code Section 77q is a fraudulent scheme. Counts Twenty-Nine to Forty inclusive, at best, charge Dr. Mullenax with violation of 15 United States Code Section 77q in the generic terms of the statute. Such a charge as a matter of law is deficient, and does not conform with the requirements of Rule 7(c) of the Federal Rules of Criminal Procedure, nor the mandate of the High Court as set forth in the landmark decision of Russell v. United States, 369 U.S. 749, 765, 766 (1962).

In Russell it was held that the general language of a statute may be used in a general description of an offense, but that such statutory language must be accompanied with a statement of the facts and circumstances as will inform a defendant of the specific offense coming under the general description with which he is charged. See United States v. Hess, 124 U.S. 483. The court said in Russell:

"It is an elementary principle of criminal pleading, that where the definition of an offence, whether it be at common law or by statute, 'includes generic terms, it is not sufficient that the indictment shall charge the offense in the same generic terms as in the definition; but it must state the species, it must descend to particulars.'" United States v. Cruikshank, 92 US 542, 558, 23 L ed 588,593. An indictment not framed to apprise the defendant 'with reasonable certainty, of the nature of the accusation against him... is defective, although it may follow the language of the statute.' United States v. Simmons, 96 US 360, 362, 24 L ed 819, 820. 'In an indictment upon a statute, it is not sufficient to set forth the offence in the words of the statute, unless those words of themselves fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offence intended to be punished. . . .' United States v. Carll, 105 US 611, 612, 26 L ed 1135. 'Undoubtedly the language of the statute may be used in the general description of an offence, but it must be accompanied with such a statement of the facts and circumstances as will inform the accused of the specific offence, coming under the general description with which he is charged.' United States v. Hess, 124 US 483, 487, 31 L ed 516, 518, 8 S Ct 571. See also Pettibone v. United States, 148 US 197, 202-204, 37 L ed 419, 422, 423, 13 S Ct 542; Blitz v. United States, 153 US 308, 315, 38 L ed 725, 727, 14 S Ct 924; Keck v. United States, 172 US 424, 437, 43 L ed 505, 507, 19 S Ct 254; Morissette v. United States, 342 US 246, 270, note 30, 96 L ed 288 304, 72 S Ct 240. Cf. United States v Petrillo, 332 US 1, 10, 11, 91 L ed 1877, 1884, 1885, 67 S Ct 1538. That these basic principles of fundamental fairness retain their full vitality under modern concepts of pleading, and specifically under Rule 7(c) of the Federal Rules of Criminal Procedure, is illustrated by many recent federal decisions." (Emphasis added; footnotes omitted)

In other words, if a statute upon which an indictment is lodged fails, by virtue of its general terminology, to sufficiently apprise the defendant of what he needs to know in order to commence the preparation of a defense, the indictment must be dismissed because it must specifically set forth the facts which constitute the alleged offense. See United States v. Lowell, 473 F2d 1054 (CA 7, 1973).

Counts Twenty-Nine through Forty in pertinent part set forth the use of the mails "pursuant to and in furtherance of the scheme alleged in these Counts Twenty-Nine through Forty, in connection with the following sales, pledges and dispositions of Select stock". Thereafter is set forth the following categories: "date", "purchaser, lender, etc.", "number of shares". The counts significantly and to the clear detriment of Dr. Mullenax fail to specify the elements of the offense as to enable him to prepare a defense. The allegations fail to specify which counts are in connection with a sale as distinguished from a pledge or "other disposition" of Select stock; fail to allege that the use of the mails was in direct connection with the scheme in that the mails were used to transmit offers or other sales literature, or were used to transport securities

after sale, or to remit proceeds to or to send confirmation slips to a buyer. The importance of such particularization is evident when considered with the Grand Jury function under the Fifth Amendment to the Constitution which relates to the protection of a citizen against unfounded charges. However, before addressing the particular issue, it is important to emphasize Judge's Kaufman's statement in United States v. Seeger, 303 F2d 478, 483, where he said:

> "[T]he Federal Rules of Criminal Procedure unmistakably require the Government to plead 'the essential facts constituting the offense charged'" (Judge Kaufman's emphasis).

It is clear that the essential facts are not set forth in these counts.

In United States v. Pope, 189 F. Supp. 12 (SDNY 1960), Judge Weinfeld stated in connection with this point:

> "The allegations substantially follow the language of section 23 of the Act, 15 U.S.C.A. §77x, which contains the

essential elements of the crime charged.* In particularizing the generic terms of the statute, the count then specifies (1) the date and place of the filing of the registration statement, (2) the precise paragraph of the registration statement wherein it is alleged the defendants misstated, and omitted to state, material facts, and (3) that such misstatements and omissions concerned material interests of the defendants and their associates in certain transactions relating to the sale, transportation and delivery of salt. Colonial and associates of the defendants are named as parties to the transactions. Finally, falsity is delineated in that, contrary to the defendants' statements in the registration form, the associates of the defendants in such transactions did not, in fact, deal with Colonial on terms at least as advantageous as was available to it in the open market. This analysis of the allegations of the count makes it clear that not only are the essential elements of the crime charged set forth, but that sufficient detail is given to enable the defendants to defend against the charges." (Underscoring supplied)

Counts Twenty-Nine through Forty do not come with-

*Where a violation of a statute is charged, an indictment in the language of the statute is ordinarily sufficient, an exception being where the statute includes by implication an essential element of the offense. See United States v. Carll, 1881, 105 U.S. 611, 26 L.Ed. 1135; United States v. Palmiotti, 2 Cir., 1958, 254 F.2d 491; United States v. Williams, 5 Cir., 203 F2d 572, certiorari denied 1953, 346 U.S. 822, 74 S.Ct. 37, 98 L.Ed. 347; United States v. Achtner, 2 Cir., 1944, 144 F2d 49. However, where the statute is couched in general terms, the indictment must particularize the offense sufficiently to inform the defendant of the accusation which he must meet. United States v. Hess, 1888, 124 U.S. 483, 8 S.Ct. 571, 31 L.Ed. 516; United States v. Simmons, 1877, 96 U.S. 360, 24 L,Ed. 819. (Underscoring supplied) (All other footnotes omitted)

in the above guidelines. While the counts are phrased in terms of the statutes involved, the omission of specific factual allegations render the counts defective with respect to the constitutional rights of the defendant Mullenax.

There is no particularization as to the scheme, the untrue statements, the fraud, the contents of the mailing as being a prospectus or otherwise as to comply with the requirements of Rule 7(c) and Russell.

Additionally, the defendant Mullenax contends that the allegations of the aforesaid counts fail to charge a crime against him under the statutes. See Lauer v. United States, 320 F2d 187, 190, 191 (CA7, 1963). In this respect, the court in Russell, supra, at 768-9, noted that:

> "The principle enunciated in Cruikshank* retains undiminished vitality, as several recent cases attest. 'Another reason [for the requirement that every ingredient of the offense charged must be clearly and accurately alleged in the indictment], and one sometimes overlooked, is to enable the court to decide whether the facts alleged are sufficient in law to withstand a motion to dismiss the indictment or to support a conviction in the event one should be had.' United States v. Lamont, (DCNY) 18 F.R.D. 27, 31. 'In addition to informing the defendant, another purpose served by the indictment is to inform the trial judge what the case involves, so that as he presides and is called upon to make rulings of all sorts, he may be able to do so intelligently.' (Citations omitted)"

*United States v. Cruikshank, 92 U.S. 542, 558.

Moreover, as referred to earlier, an offense must be accurately described, for if it is not, and is made so only by a process of interpretation, there can be no assurances that the Grand Jury would have charged such an offense. See Smith v. United States. Counts of an indictment should not be left open to construction or interpretation.

Counts Twenty-Nine through Forty leave the prosecution free to fill in vital missing facts during the course of its presentation at trial. Such a procedure is constitutionally improper inasmuch as there is no assurance that the alleged fraud will be delineated as intended by the Grand Jury on the basis of the evidence presented to it. A defendant cannot be convicted on the basis of facts not found by, and perhaps not even presented to the Grand Jury which indicted him. The pertinent facts in these counts should have been considered by the Grand Jury and to the extent applicable stated in the indictment. The court should not guess and the defendants cannot be constitutionally compelled to guess what the Grand Jury had in mind.

POINT IV

COUNTS TWENTY-NINE THROUGH FORTY OF THE INDICTMENT ARE MULTIPLICITOUS AND MUST BE DISMISSED OR IN THE ALTERNATIVE MUST BE CONSOLIDATED INTO A SINGLE COUNT.

An indictment which charges a single offense in numerous counts is multiplicitous.

The allegations in Counts Twenty-Nine through Forty purport to charge a crime which contemplates a single violation. Defendant Mullenax contends that the offenses alleged in these counts are in fact identical and are nothing more than an illegal attempt to fragment a single purported crime into separate crimes.

United States v. Cashin, 281 F2d 669 (CA 2, 1960), holds that the gist of the crime under 15 USC 77q is a fraudulent scheme rather than a specific use of the mails in pursuance thereof. Thus to charge each use of the mails as a separate offense is improper inasmuch as the use of the mails is solely to create the basis for federal jurisdiction. Therefore, Counts Twenty-Nine to Forty inclusive are multiplicitous because they fragment a single alleged crime into a series of crimes. See United States v. Greenberg, (SDNY 1962) 30 F.R.D. 164; United States v. Hughes, (SDNY 1961) 195 F.Supp. 795.

In Hughes, supra, at 798, Judge Dimock said:

> "Since the gist of the crime is the fraudulent scheme and the purpose of the requirement that there be a use of the mails or other facilities of commerce is solely to create a basis for federal jurisdiction, the multiple mailings in carrying out the scheme do not constitute separate crimes. Each device to defraud or each obtaining money by false statements or each transaction which operates as a fraud may be a separate crime but not each use of the mails or interstate commerce.
>
> Each count here alleges a device to defraud and the obtaining of money by false statements and the engaging in transactions which operated as a fraud but there is nothing to show that the crime charged in any one of them differs from that charged in others. The allegation in each that in the course of the commission of the crime matter was sent by mail to a named person who in most cases differs from the other addresses does not constitute an allegation that there was a different device, obtaining of money or engaging in a transaction with respect to each named person.... For all that appears, all eighteen mailings were in a single fraudulent course of conduct alleged and realleged eighteen times in the indictment."

There are no allegations in this indictment of more than a single scheme to defraud. The use of the mails as alleged in Counts Twenty-Nine through Forty inclusive are at best merely steps in the operation of the alleged

overall fraudulent scheme purportedly described in the paragraphs preceding the assertion of separate mailings to the purported victims. The counts are clearly defective inasmuch as they fragment a single prohibited course of conduct into separate crimes. Under 15 USC 77q each piecemeal part of an overall course of conduct could not properly constitute a separate count of an indictment nor a separate and distinct act to which criminal liability attaches.

POINT V

COUNTS FORTY-ONE THROUGH FIFTY-ONE OF THE INDICTMENT MUST BE DISMISSED FOR FAILURE TO STATE A CRIME FOR WHICH THE DEFENDANT MULLENAX CAN BE CHARGED.

It is the express intent of Congress that the provisions of Section 77e United States Code Title 15 be applicable only to issuers, underwriters and dealers as defined in 15 United States Code Sections 77(b)(4)(11)(12). The substantive charges under 15 United States Code Section 77e against Dr. Mullenax (Counts Forty-One to Fifty-One inclusive) cannot be sanctioned or permitted by the court because the duty and liability, criminal and civil, in terms of the registration of securities has been expressly held by the legislature to apply to those directly responsible and accountable therefor.

Section 77(d) of Title 15 United States Code entitled "Exempted transactions" provides in pertinent part:

> "The provisions of Section 77e of this title shall not apply to --(1) transactions by any person other than an issuer, underwriter, or dealer."

Dr. Mullenax unequivocally was not an issuer, underwriter, or dealer in the stock of Select Enterprises, Inc. Consequently, as a matter of law, the substantive

charges under 15 United States Code 77e must be dismissed.*

*It is noted that the affidavit of Dr. Mullenax submitted simultaneously with his omnibus notice of motion and memorandum of law states that he was never an officer or director of Select Enterprises, Inc. and had absolutely no connection or relationship with Select Enterprises, Inc. or any of the named defendants or co-conspirators at the time Goldfield Candelora was "reactivated...and its name changed to Select".

POINT VI

THE COURT SHOULD STRIKE THE "INTRODUCTION" PORTION OF THE INDICTMENT AS SURPLUSAGE.

The defendant Mullenax contends that the "Introduction" portion of the Indictment must be striken as being both inflammatory and prejudicial matter. The "Introduction" does not set forth any allegations pertinent to the viability of the charges against the defendant Mullenax, but merely affords the prosecution an opportunity to have read to the jury,and to present to the jury,matter in the form of a press release which, in substance, results in the denial of fundamental due process to the defendants. See Dranow v. United States, 307 F2d 545, 558 (CA8, 1962).

Judge Irving R. Kaufman in United States v. Bonano, 177 F.Supp. 106 (SDNY, 1959), with respect to a motion to strike surplusage pursuant to Rule 7(d) said:

> "The danger to be protected against is that material prejudicial and otherwise inadmissible will be conveyed to the jury when the indictment is read (177 F. Supp. at 116)."

The defendant Mullenax in his affidavit in support of his pretrial motions states that during the period in issue, as set forth by the indictment, he was

always regularly employed. Consequently, paragraph 5 of the "Introduction" is both false, misleading, inflammatory, and prejudicial and its inclusion has no place in the resolution of the charges by a jury. In any event, paragraph 5 of the "Introduction" with the other matters set forth in the "Introduction" has the force and effect, if read to the jury to inescapably result in prejudice to the detriment of the defendant.

The reading of the "Introduction" will be more than a statement of the charges. It will afford the prosecution an unfair hand in further approaching the jury immediately prior to retirement.

POINT VII

COUNTS TWO THROUGH TWENTY-EIGHT OF THE INDICTMENT MUST BE DISMISSED FOR FAILURE TO CONFORM WITH THE MANDATE OF RULE 7(c) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE AND THE MANDATE OF RUSSELL V. UNITED STATES, 369 U.S. 742 (1962).

Counts Two through Twenty-Eight share in large part the problems asserted with regard to Counts Twenty-Nine through Forty. See PointIII,supra. The elements of 18 United States Code Sections 1341 and 1343 are (1) the forming of a scheme to defraud and (2) the use of the mails, wire, radio or television for executing the scheme. See Pereira v. United States, 347 U.S. 1, 8 (1953).

Counts Two through Twenty-Eight are without particularization as to what was mailed. The counts in pertinent part allege that "certain mail matter as hereinafter set forth" was sent by listed "addressors" to listed "addressees". The counts enumerate "letter(s)" and "telephone (calls)" as means. However, the counts blatantly fail to allege any connection with the purported scheme in a manner which can be construed consistent with the requirements of Rule 7(c) and Russell as set forth in Point C, supra. Moreover, there can be no assurance that the crimes will be delineated in the same manner as intended by the Grand Jury. Counts Two to Twenty-Eight inclusive share the

same limitations as Counts Twenty-Nine through Forty, and should be dismissed as well.

The Court in United States v. Bachman, 246 Fed. 1009 stated in connection with mail fraud charges:

> "[P]ractices may be indulged in or resort may be had to them by defendants which may be characterized as fraudulent and found to be such, and yet there may not be fraud within the meaning of Acts of Congress protecting the integrity of the mails."

Here we do not have the specific allegation of a materially false and misleading prospectus. It is respectfully suggested that the Court make an in camera inspection of the Grand Jury minutes to ascertain whether the "letters" and "telephone (calls)" were of the type and nature meant and intended to be protected by Congress in enacting 18 U.S.C. 1341 and 1343.

With regard to the argument for in camera inspection of the Grand Jury minutes by the court, the matter set forth with regard to Counts Two through Twenty-Eight and Counts Twenty-Nine through Forty, taken in connection with the failure to allege defendant Mullenax's involvement in paragraph 3(h) of Count One, in further connection with Counts Fifty-Two and Fifth-Three gives the Court ample basis and foundation to examine the Grand Jury minutes to disclose whether there was sufficient evidence before

the Grand Jury warranting the inclusion of Dr. Mullenax in the instant indictment.

POINT VIII

COUNTS TWO THROUGH TWENTY-EIGHT ARE MULTIPLICITOUS EXPOSING THE DEFENDANT MULLENAX TO DOUBLE JEOPARDY IN VIOLATION OF HIS RIGHT TO DUE PROCESS.

An indictment which charges a single offense in numerous counts is multiplicitous.

The allegations purport to charge a crime which contemplates a single violation.

Defendant Mullenax contends that the evidence alleged in counts Two through Twenty-Eight are in fact identical and are nothing more than an illegal attempt to fragment a single purported crime into separate crimes, exposing the defendant to double jeopardy in violation of the federal constitution.

The prosecution seeks to take the charge which in essence is based on "a scheme and artifice to defraud" and to fragment it by asserting that it becomes separate and numerous violations on the basis of several purported elements, namely, specific mailings which the prosecution apparently contends to be the basis of the "scheme and artifice to defraud" with regard to the statute. Under Sections 1341 and 1343 of Title 18 U.S. Code, each piecemeal part of the overall course of conduct could not properly constitute a separate count of an indictment nor a

separate and distinct act to which criminal liability attaches. See Bell v. United States, 349, U.S. 81 (1955); Prince v. United States, 352 U.S. 322 (1957); Heflin v. United States, 358 U.S. 415 (1959).

POINT IX

THE PLEDGING OF SELECT STOCK DOES NOT PERMIT CRIMINAL CHARGES UNDER 15 UNITED STATES CODE SECTIONS 77e AND 77q, AND CERTAIN COUNTS OF THE INDICTMENT MUST BE DISMISSED.

Because of the failure to particularize the essential facts in accordance with Rule 7(c) of the Federal Rules of Criminal Procedure and Russell v. United States, supra, in Point III of the brief, it is not possible to determine which counts of the indictment deal with the pledge of Select stock. Nevertheless, the use of purported unregistered stock as collateral for an independent agreement of indebtedness on a loan, as an example, does not constitute a "sale" of securities for purposes of both 15 United States Code Section 77e and 15 United States Code Section 77q.

It is contended herein that the pledge of a security is not a disposition of a security for value. Its use as collateral serves a one way purpose: to insure the payment of an otherwise independent obligation. The holding of the security, for example by a bank, insures that the obligor is disposed to pay the legal obligation. The obligee has recourse in the civil courts for failure of the obligor to pay the debt. The holding of collateral "pledged" primarily means that the obligee feels that the

obligor will have more than moral reason or legal commitment to pay the debt.

Consequently, any alleged use of Select Stock in connection with a loan, does not take on the character meant by the legislature in protecting the public in its tradings and dealings in the securities markets, and does not permit charges under the securities laws (15 U.S.C. 77e and 77q).

Again as Judge McLean stated in his conclusions and findings in the S.E.C. proceedings which formed the basis of the instant indictment (Securities and Exchange Commission v. Select Enterprises, Inc., et al., 70 Civ. 3795):

> "Segal, it is true, appears to have used a few additional thousand shares for other purposes, such as pledging some for a loan and giving some to a furrier as security for the price of a fur coat. But transactions of that sort do not seem to me to have any real bearing upon the securities laws."

Those counts which were not delineated by the Grand Jury purportedly involving the pledge of Select Stock should be dismissed by the Court after it makes an in camera inspection of the Grand Jury minutes and ascertains which counts do purport to charge a criminal violation because of the pledge of Select Stock.

POINT X

DEFENDANT MULLENAX IS ENTITLED TO FULL DISCOVERY AND INSPECTION PURSUANT TO RULE 16 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE.

It is noted that the prosecution pursuant to affidavit of W. Cullen Mac Donald, Assistant United States Attorney, has consented to certain discovery in accord with Rule 16 of the Federal Rules of Criminal Procedure. It is added that the court should permit the defendant Mullenax discovery of statements of co-conspirators since in the prosecution's position may be a claim that the statement of co-conspirators are attributable to any or all of the defendants on an agency theory.

POINT XI

DEFENDANT MULLENAX'S DEMAND FOR A BILL OF PARTICULARS SHOULD BE IN ALL RESPECTS GRANTED.

Defendant Mullenax's motion for a bill of particulars is in the alternative to his prayer for dismissal of enumerated counts of the indictment.

The indictment is at best in a short skeletal form which provides virtually none of the material information or matter necessary to apprise Dr. Mullenax of the charges levelled against him.

A defendant hauled into court upon mere accusation is entitled to those particulars necessary to inform him of the specific nature of the charges against him with such precision so as to enable him to prepare his defense, avoid the danger of surprise at trial, limit the scope of the prosecution's proof at trial and to enter a plea of double jeopardy. United States v. Haskins, 345 F2d 111, 114 (CA6, 1965); Williams v. United States, 289 F2d 598, 601 (CA 9, 1965); United States v. Glaze, 313 F2d 757 (CA 2,1963); Azcona v. United States, 257 F2d 462 (CA 5, 1959); United States v. Burgio, 279 F.Supp. 843, 946 (SDNY 1968); United States v. Brennan, 134 F.Supp. 42, 52 (D.Minn. 1955); United

States v. Klein, 124 F.Supp. 476 (SDNY 1954), aff'd. 247 F2d 908 (CA2, 1957).

Rule 7(f) was amended in 1966 to eliminate the requirement of "cause" for the filing of a bill of particulars. The 1966 amendment to Rule 7(f) was designed to induce a more liberal attitude toward particulars. See Nesson v. United States, 388 F2d 603 (CA 1, 1968), cert. den. 391 U.S. 920 (1968); United States v. Joskiewicz, 278 F.Supp. 525, 528 (E.D. Pa. 1968); United States v. Acarino, 270 F.Supp. 270 F.Supp. 526 (EDNY 1967); United States v. Rosenfeld, 264 F.Supp. 760, 762 (N.D.Ill. 1967); United States v. Roberts, 264 F.Supp. 622, 624 (SDNY 1966); United States v. Tucker, 262 F.Supp. 305, 307 (SDNY 1966).

The fact that affording defendant protection under Rule 7(f) may, in certain cases, require some disclosure of the Government's evidence, is not a bar to relief where the particulars demanded are, as here, necessary to the preparation of the defense. United States v. Crisona, 271 F. Supp. 150, 156 (SDNY 1967); United States v. Cimino, 31 F.R.D. 277, 279 (SDNY 1962); United States v. Bentvena, 193 F.Supp. 485 (SDNY 1960); United States v. Smith, 16 F.R.D. 372 (W.D.Mo. 1954); United States v. Kessler, 43 F.Supp.408

(EDNY 1942); United States v. Gypsum, 37 F.Supp. 398, 402 (D.D.C. 1941); United States v. Allied Chemical & Dye Corporation, 42 F.Supp. 425, 428 (SDNY 1941).

Moreover, because of the presumption of innocence, particulars may never be denied on the ground that the defendant already has knowledge of the facts. United States v. Smith, supra; United States v. Allied Chemical & Dye Corporation, supra; United States v. Tucker, supra.

The function of a bill of particulars is also to save a defendant wholly needless labor in preparing his defense. United States v. Philippe, 173 F.Supp. 582, 585 (SDNY, 1959); United States v. Dolan, 113 F.Supp. 757, 759 (D.Conn. 1953).

In the Smith case, Justice Whitaker succinctly stated the approach to be taken to a defendant's demand for a bill of particulars (16 F.R.D. at 375):

> "Nor is it any answer to a motion for a bill of particulars for the government to say: 'The defendant knows what he did, and, therefore, has all the information necessary.' This argument could be valid only if the defendant be presumed to be guilty. For only if he is presumed guilty could he know the facts and details of the crime. Instead of being presumed guilty, he is presumed to be innocent. Being presumed to be innocent, it must be assumed that he is ignorant of the facts on which the pleader founds his charges.'

Fontant v. United States, 262 F. 283 (CA 8); U.S. v. Allied Chemical & Dye Corp., 42 F. Supp. 425. This conclusion seems to me to be elementary, fundamental and inescapable."

Lastly, the revision in favor of disclosure for the defendant in terms of the more liberal attitude in handling motions for bills of particulars was forcefully and articulately stated by the Court in United States v. Glaze, 313 F2d 761 (CA 2, 1963). The Court characterized, in that case, "the Government's response to the defendant's motion for a bill of particulars" as being "more in the spirit of a ride to the hounds than a fairminded pursuit of the truth." The Court went on to say that although the Government does not have to give away its entire case, nevertheless it must make "a conscientious endeavor to avoid surprise at trial" which "in turn makes for a more expeditious trial." (Id. at 761).

Given the length of time which has elapsed since the dates of the various crimes charged and the infirmities of the indictment as set forth in this memorandum, this Court should grant the demand of the defendant for a bill of particulars as set forth in his notice of motion.

POINT XII

THE RIGHT TO INSPECTION OF EXCULPATORY MATTER IS DERIVED FROM THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND REQUIRES PRE-TRIAL PRODUCTION.

Movant's right to discovery of favorable evidence in the possession of the Government is derived primarily from the Fifth Amendment to the Constitution of the United States. In Brady v. Maryland, 373 U.S. 83 (1963), the Supreme Court of the United States specifically recognized a defendant's constitutional right to such evidence. Speaking for the Court, Mr. Justice Douglas said (373 U.S. at 87):

> ". . .We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith of the prosecution."

In United States ex rel. Butler v. Maroney, 317 F2d 622, 627 (1963), the Court of Appeals for the Third Circuit, following Brady, held that a defendant was denied due process when the prosecution withheld "information impinging on a vital area in appellant's (defendant's) defense." To the same effect, see Barbee v. Warden, 331

F2d 842 (CA 4, 1964), and United States ex rel. Meers v. Wilkins, 326 F2d 135 (CA 2, 1964).

Movant's constitutional right to the production of favorable evidence should not be diluted by allowing the Government to withhold that evidence until trial. In order to afford the defendant a fair opportunity to make full use of such evidence in preparing his defense, the production is required at the pre-trial stages of the litigation.

The right to the discovery of favorable evidence prior to trial was expressly recognized in Brady, where the Court declared (373 U.S. at 87, 88):

> "A prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps to shape a trial that bears heavily on the defendants." (Emphasis supplied)

In Brady the only request or demand by the defendant that the prosecution produce exculpatory evidence occurred before trial. Accordingly, it is evident that the thrust of the Supreme Court's decision was to find in the due process requirements of the Constitution an important pre-trial discovery right for a person accused of a crime. Favorable evidence, therefore, must be disclosed by the prosecution

well in advance of trial. See Williams v. Dutton, 400 F2d 797 (CA 5, 1968), cert. denied 393 U.S. 1105 (1969); Ashley v. Texas, 319 F2d 80 (CA 5, 1963); United States v. Houston, 339 F.Supp. 762 (N.D. Georgia 1972); United States v. Eley, 335 F.Supp. 353 (N.D. Georgia 1972); United States v. Leichtfuss, 331 F.Supp. 723 (N.D.Ill. 1971); United States v. Gleason, 265 F.Supp. 880 (SDNY 1967); United States v. White, 50 F.R.D. 70, 73 (N.D. Georgia 1970); United States v. Ladd, 48 F.R.D. 266 (D.Ala. 1969); United States v. Fratello, 44 F.R.D. 444, 452 (SDNY 1968).

In Ashley v. Texas, supra, the defendants were convicted of murder. Prior to trial the prosecution obtained a medical report by the county psychiatrist, who concluded that the defendant was of sound mind. However, the prosecution had also obtained an opinion from another psychiatrist and psychologist, which indicated that the defendants were not legally sane. The prosecution failed to disclose the existence of the contrary opinions to defense counsel. The suppressed information did not even relate to the only defense raised at trial, i.e., self-defense. Nevertheless, the question, as the Court saw it, was:

> "Whether the failure of the District Attorney to disclose to appellants' counsel the fact, known to him, of the existence of opinions arrived at by specialists engaged by the State favorable to the accused if known in time for them to plan the strategy of, and conduct their trial is such a denial of due process as to invalidate the trial." (319 F2d at 83)

And the Court concluded that:

> "The fact of the opinion of Drs. Crowe and Trachter, favorable to the defendants, is of such vital significance to the accused persons in planning and conducting their defense, the failure of the District Attorney to inform their counsel of this fact amounts to such fundamental unfairness in the trial of a criminal case as to amount to a denial of due process." (319 F2d at 85)

Similarly, in United States ex rel. Butler v. Maroney, supra, the Third Circuit, applying the teaching of Brady, noted that timely discovery of the favorable evidence could have influenced the defendant's entire trial strategy.

The emphasis, then, is on the effect that suppression by the prosecution of favorable evidence has on a defendant's ability during the pre-trial stage to plan and prepare his defense. It has long been recognized that there exists a great "disparity between the investigating powers of the State and the defendant," and that a defendant's facilities for gathering evidence in anticipation of trial

are usually meager, especially in comparison to those of the prosecution. Application of Kapatos, 208 F.Supp. 883, 888 (SDNY 1962).

Accordingly, when the prosecution aggravates a defendant's lack of ability to obtain evidence in preparation for trial by not revealing to him before trial evidence material to his defense, a fair trial is impossible and there results a denial of due process law

CONCLUSION

DEFENDANT'S MOTIONS SHOULD IN ALL RESPECTS BE GRANTED.

Respectfully Submitted,

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JOSEPH B. EHRLICH,
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WCMacD:dm

A 90

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA, :

- v - : AFFIDAVIT

JOE TRUMAN BOYD, et al., : 75 Cr. 140 (MP)

Defendants. :

- x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

W. CULLEN MAC DONALD, being duly sworn deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York, and, as such, am familiar with and am in charge of the above-captioned matter.

2. I make this affidavit, after reviewing the Government files in the above-captioned matter, for the purpose of curtailing undue delay in the administration of criminal justice and conserving the Court's time by setting forth that information otherwise available to the above defendants, upon motion properly made pursuant to Rules 7(f) and 16 of the Federal Rules of Criminal Procedure and Section 2518, paragraphs (8), (9) and (10), of Title 18, United States Code, which the Government will make available to each defendant entitled to such information, irrespective of whether such motion was made.

WCMacD:dm

Prior Proceedings

3. On February 10, 1975, Indictment 75 Cr. 140 in fifty-two counts, was filed charging all the above named defendants with conspiring to violate Sections 1001, 1341 and 1343 of Title 18, and Section 77e, 77q and 77x of Title 15, United States Code, and with substantive violations of such provisions.

4. On February 24, 1975, all of the defendants appeared and pleaded not guilty to Indictment 75 Cr. 140 except the defendant Ernest R. Mullenax for whom a plea of not guilty was entered and a bench warrant issued upon order of Morris E. Lasker, United States District Judge. The defendants were instructed that motions were returnable in 10 days and Indictment 75 Cr. 140 was assigned to Milton Pollack, United States District Judge, for all purposes.

5. The Government will furnish a Bill of Particulars setting forth the following:

a) the "false writings and documents" and the "financial statements" charged in paragraphs 3(h) and 3(j) of Count One;

b) the approximate time, date and location of each overt act set forth in Count One;

c) the letters and the records of telephone calls charged in Counts Two through Twenty-Eight;

d) the documents charged in Counts Fifty-Two and Fifty-Three; and

e) the names, if any, of co-conspirators known to the Government and not identified in the indictment.

6. The Government will make available to each defendant for inspection and copying at the United States Attorney's offices during reasonable business hours:

a) his written or recorded statements or confessions, if any, within the meaning of Rule 16(a) of the Federal Rules of Criminal Procedure;

b) results or reports of medical examinations and scientific tests, if any, within the meaning of Rule 16(a);

c) his recorded testimony before the grand jury, if any, within the meaning of Rule 16(a);

d) books, papers, documents, tangible objects or places under the control of the Government, if any, which may be material to the preparation of his defense within the meaning of Rule 16(b0; and

e) tapes of conversations electronically recorded under Court Order pursuant to Section 2518 of Title 18, United States Code, or with the consent of a party to such conversation.

7. The Government is aware of its obligations under Brady v. Maryland, 373 U.S. 83 (1963) and will in the event such material becomes known make full disclosure to each effected defendant.

8. The Government accedes to providing all of the above information in order to expedite an already congested criminal docket of the Southern District of New York. Your deponent is of the opinion that the above represents all the information which the Government would be required to disclose upon pre-trial motions properly made by each defendant.

9. No pre-trial severences or disclosure of the evidence upon which the grand jury relied is appropriate or warranted in the facts and circumstances of this case.

W. CULLEN MACDONALD
Assistant United States Attorney

Sworn to before me this

14 day of March, 1975.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA, :

- v - : BILL OF PARTICULARS
75 Cr. 140 (MP)

JOE TRUMAN BOYD, et al., :

Defendants. :

- x

The United States of America, as and for its Bill of Particulars, alleges as follows:

a) The "false writings and documents" and the "financial statements" charged in paragraphs 3(h) and 3(j) of Count One are available for inspection and copying by each defendant at the United States Attorney's Offices during reasonable business hours.

b) The approximate time, date and location of each overt act set forth in Count One is as follows:

1. January 26, 1970; Reno, Nevada to New York, New York; banking hours.

2. February 4, 1970; New York, New York; business hours.

3. February 11, 1970; New York, New York; business hours.

4. February 26, 1970; New York, New York nighttime.

5. March 1, 1970; New York, New York to Dallas-Fort Worth, Texas; daylight hours.

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6. March 9, 1970; Fort Worth, Texas; business hours.

7. March 28, 1970; Abilene, Texas; nightime.

8. April 17, 1970; Fort Worth, Texas; business hours.

9. Week ending May 9, 1970; New York, New York; business hours.

c) The letters and records of telephone calls charged in Counts Two through Twenty-Eight are available for inspection and copying by each defendant at the United States Attorney's Offices during reasonable business hours.

d) The documents charged in Counts Fifty-Two and Fifty-Three are available for inspection and copying by each defendant at the United States Attorney's Offices during reasonable business hours.

e) The names of co-conspirators known to the Government and not identified in the indictment will be supplied hereafter in a Supplemental Bill of Particulars.

Dated: New York, New York
May 15, 1975

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United States Attorney for the
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Attorney for the United States
of America

By: W. Cullen Mac Donald

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA, :

- v - : SUPPLEMENTAL BILL OF PARTICULARS

JOE T. DORD, et al., : 75 Cr. 140 (GP)
and
Defendants. : 75 Cr. 346 (GP)

- x

S I R S:

[illegible] E. Nathan, Esq. and for its Supplemental Bill of Particulars, states:

1. Co-conspirators not previously identified in the indictment:

B. Acton	M. Clegg	D. Handley
O. Aufang	W. Davidson	K. Hester
B. Baker	G. Dial	J. Johnson
W.L. Booker	H. Dillard	G. King
M. Bleil	D. Ford	G. Mathes
L. Boardman	T. Garza	D. Reuse
H. Brinlee	S. Hale	M. Schneiderman
J.L. Brown	H.T. Hansen	T. Shaw
H. Cameron	P. Harrelson	A. Spranger
B. Carver	G.D. Harris	J. Vinson
W.C. Chapel	R.E. Harvey	M. Richards

2. Some prior; contemporaneous and subsequent similar acts not previously identified which may become the subject of proof in both the Government's direct and rebuttal cases:

Enterprise Securities, Inc.
General Oil & Industries, Inc.
Gold Platinum International
Grimes Consolidated
Industrial Manufacturing Corporation
Ladd Mountain Mining Co.
Silver Empire Inc.

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American Education Society
C.A. Morris & Co.
E.D. Goodloe Minerals
International Soil Conditioner
Land Utilization Co.
Ten Tex Land and Cattle
United American Industries
Western Land and Cattle Company
Western Processing Company

American Milling Co.
Blue Cross Finance Co.
Doctor's Finance Co.
Economic Management Services
Physician's Finance Co.
South Central Industries
Standard Milling Company
United American Industries
U.S. Mica

Progressive Investment

[illegible]
[illegible] Moth
Electrodynamics
Galco
Keystone Cable
Penn Dutch
Pioneer Development
Precision Portraits

Dated: September 5, 1975
New York, New York

Yours, etc.

PAUL J. CURRAN
United States Attorney

By: W. Cullen MacDonald

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
-v-	:	AFFIDAVIT
JOE TRUMAN BOYD, et al.,	:	75 Cr. 140 (MP)
Defendants.	:	75 Cr. 346 (MP)

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

W. CULLEN MacDONALD, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York, and as such am in charge of the prosecution of this case. I make this affidavit in opposition to the motions of defendants Ford, Bissett, Mullenax and Brookshire for severance of their cases in Indictment 75 Cr. 140, and in reply to the affidavit sworn to June 12, 1975, on behalf of defendant Gardner in Indictment 75 Cr. 346, which opposes the Government's motion to consolidate that indictment for trial with Indictment 75 Cr. 140.

2. Indictment 75 Cr. 140, filed February 10, 1975, charges the sixteen defendants named in it, and Indictment 75 Cr. 346, filed April 4, 1975, charges defendant Gardner, in 53 counts with identical mail, wire and securities fraud violations of 18 U.S.C. §§ 1341 and 1343 and 15 U.S.C. § 77q, sales of unregistered securities in violation of 15 U.S.C. § 77e, false statements to the SEC in violation of 18 U.S.C. § 1001, and a conspiracy so to act in violation of 18 U.S.C. § 371. The Government's evidence in support of both indictments will be substantially the same.

j. The bulk of the government's evidence will be concentrated on a relatively brief period, the first six months of 1970, although there will of course be proof relating to other parts of the larger conspiracy period alleged in both indictments. The proof will show that all of the moving defendants were members of, and actively engaged in conduct in furtherance of, the conspiracy during that six-month period, and that their conduct endured throughout a substantial portion of that period and was not isolated or sporadic. In addition, contrary to the contentions the moving defendants make, the evidence will show that there was but one conspiracy involved, the nature and objects of which are succinctly alleged in the indictments (count one, par. 2).

k. Ford's gratuitous claim (Feldman Aff., par. 19(c)) turns in part on what is "post-conspiratorial". The government contends that statements made to the SEC in February, March and April 1970, to give an example of statements which may be offered, are not "post-conspiratorial" by any rational test. As to Ford himself, his claim is doubly without merit so far as concerns any statement made to the SEC in his presence.

l. Ford's two remaining claims (i.e., par. 19(a) and 19(e)) are equally without merit. There is no showing even in an attorney's affidavit, much less in the affidavit of a competent witness, of what Ford could not testify to because of the attorney-client privilege, or what exculpatory testimony his co-defendants might provide at a separate trial. Generalized speculation of the kind Ford sets forth is not sufficient basis for a severance. See, e.g.,

United States v. Passoudi, 49 F.R.D. 43, 45 (S.D.N.Y. 1969) (Mansfield, J.).

6. Bissett (and other movants) seek support for severance from the contents or lack of contents of the SEC's injunction suit. The reliance is misplaced; the SEC's choice of persons to enjoin from unlawful distribution of Select stock is not dispositive of, if it is even relevant (which we do not concede) to, the question whether joinder for the criminal trial is proper.

7. The general statement made above (supra, par. 3) is likewise applicable to Brocksmire, with the exception that the Government will not offer proof showing his involvement after mid-March 1970. Brocksmire's claim that he will be denied the hypothetical benefit of undescribed exculpatory testimony from unidentified co-defendant witnesses, is as meritless as Ford's similar claim, and for similar reasons (see par. 5, supra).

8. Gardner's sole additional ground for avoiding consolidation is the happenstance of a separate indictment. That ground is frivolous.

WHEREFORE, I respectfully request that the several motions for severance be in all respects denied, and that the Government's motion to consolidate Indictments 75 Cr. 140 and 75 Cr. 340 for trial be in all respects granted.

A. COLLEEN MacDONALD
Assistant United States Attorney

Sworn to before me this
18th day of July, 1975

MARY L. AVENT
Notary Public
Qualified in
Cert. filed in
Commission Expires

MEMORANDUM

A 105

United States of America v. Joe Truman Boyd and Ernest R. Mullenax, et al 75 CR. 140 (MP)

The defendant Mullenax moves to dismiss the various counts of the indictment and to strike the introduction therefrom. These motions are denied in all respects.

The motions for discovery and particulars are denied in all respects except insofar as consented to in the government's March 10, 1975 affidavit the items of which have been approved by the Court as the appropriate disposition of such applications herein.

The motion for a severance is denied. Mullenax has failed to meet his burden of demonstrating that substantial prejudice will result from a joint trial. The general rule that persons indicted together should be tried together when the crimes charged against all defendants may be established by the same evidence therefore requires that the motion of defendant Mullenax under Rule 14 to sever be denied. See, e.g., United States v. Fantuzzi, 463 F.2d 683, 687 (2d Cir. 1972).

SO ORDERED.

Milton Pollack

July 21, 1975

Milton Pollack
U.S. District Judge

MICROFILM
JUL 22 1975

U.S. DISTRICT COURT
FILED
JUL 22 1975
S. D. OF N.Y.

A 106

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA,

-against-

JOE TRUMAN BOYD, et al.,

Defendants.

NOTICE OF MOTION

75 Cr 140 (MP)

----------x

S I R :

PLEASE TAKE NOTICE that upon the indictment herein, the affidavit of JOSEPH B. EHRLICH, sworn to the 26th day of August, 1975, and upon all the other papers and proceedings had herein, a motion will be made before the HON. MILTON POLLACK, United States District Court Judge, at the United States Court House for the Southern District of New York, located at Foley Square, New York, at a time and place to be fixed by the Court for an order quashing and/or modifying the subpoenae duces tecum attached to the affidavit of JOSEPH B. EHRLICH, on the ground that said subpoenae duces tecum are contrary to defendant's Fourth and Fifth Amendment rights, and are otherwise unreasonable, oppressive and improper, and for such other and further relief as to this Court may seem just and proper.

Yours, etc.

ROSENBERG, ROSENBERG & ROCKMAN
Attorneys for Defendant,
ERNEST R. MULLENAX
Office and Post Office Address
200 Garden City Plaza
Garden City, New York 11530
(516) 248-4300

TO: PAUL J. CURRAN, ESQ.
United States Attorney
Southern District of New York
One St. Andrews Plaza
New York, New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA,

-against-

JOE TRUMAN BOYD, et al.,

Defendants.

AFFIDAVIT

----------x

STATE OF NEW YORK)
) SS.:
COUNTY OF NASSAU)

JOSEPH B. EHRLICH, being duly sworn, deposes and says:

I am associated with the law firm of ROSENBERG, ROSENBERG & ROCKMAN, attorneys for the defendant, ERNEST R. MULLENAX. I make this affidavit in support of his motion to quash and/or modify the subpoenae duces tecum, photocopies which are attached hereto as Exhibits "A" and "B".

The subpoena which is attached as Exhibit "A" was received by counsel for the defendant, in the form attached, on August 23, 1975. The subpoena is manifestly addressed to "Ernest R. Mullenax" in a PERSONAL capacity and calls for "all documents of whatsoever kind and wherever located" which refer or relate to a vast array of individuals, corporations and banks. The subpoena clearly calls for personal books and records and must be quashed on the ground that it violates the defendant's privilege against self incrimination. Mr. Mullenax is named in each of the fifty-one counts of the above referenced indictment, is a defendant in a criminal prosecution, and is scheduled to appear before the Court with reference to the trial of the above described indictment on September 29, 1975. The

subpoena attached as Exhibit "A" was issued in a strictly personal capacity. The High Court in United States v. White, 64 S.Ct. 1248, poignantly stated:

> "The constitutional privilege against self incrimination....is designed to prevent the use of legal process to force from the lips of the accused individual the evidence necessary to convict him; to produce and authenticate any personal documents or effects that might incriminate him....The prosecutors are forced to search for independent evidence instead of relying upon proof extracted from individuals by force of law....(The privilege) is firmly embedded in our constitutional framework as a bulwark against inquitous methods of prosecution. It protects the individual from any disclosure, in the form of oral testimony, documents or chattels, sought by legal process against him as a witness (64 S.Ct. at 1251)."

Separate and apart from the subpoena's infraction of defendant's privilege against self incrimination, it calls for such a vast array of corporate, bank, and other third party documentation as to render it nothing less than a "fishing expedition" undertaken by the prosecution. The defendant is not subpoenaed as an official or otherwise of the banks and corporations, nor are official books and records called for; the subpoena calls for personal documentation. Nevertheless, the documentation requested is both unreasonable and unspecific, and no period of time is set forth. Additionally, the law is that a showing must be made that the documentation is both evidentiary and relevant. The Court of Appeals for the Second Circuit stated in United States v. Marchisio, 344 F2d 653 (1965):

> "Unlike the rule in civil actions, a subpoena duces tecum in a criminal action is not intended for the purpose of discovery; the document sought must at that time meet the tests of relevancy and admissibility. See 4 Barron, Federal Practice and Procedure, §2044; United States v. Murray, 297 F2d 812, 821-822 (2 Civ.) cert. den. 369 US 828, 82 S.Ct. 845, 7 L. Ed. 2d 794 (1962)." Also see Johnson v. United States, 228 U.S. 457, 458.

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AND ROCKMAN

The subpoena duces tecum (Exhibit "A") unequivocally is in violation of defendant's Fifth amendment right against self incrimination, and moreover is intended as a general fishing expedition, and is therefore an unreasonable demand which the defendant is protected against by the Fourth Amendment to the Constitution. The authority granted by Rule 17(c) to quash or to modify an unreasonable or oppressive subpoena is not limited to the power derived from the Constitution. Application of Radio Corp. of America, 13 F.R.D. 167, 171 (DCNY).

For all the above reasons, the subpoena duces tecum represented by Exhibit "A" should be quashed.

With respect to the subpoena duces tecum attached as Exhibit "B", it was received by counsel for the defendant on August 21, 1975. It is addressed to "Any Officer, Director, Attorney, Agent or Employee of Select Enterprises, Inc.". The subpoena does not make it clear that it calls for official books and records of Select Enterprises, Inc. but sets forth in part:

> "All documents of whatsoever kind and wherever located which refer or relate in any way, expressly or impliedly, to any of (A) Select Enterprises,Inc. (hereinafter "Select"), (B) Goldfield Candelaria Cooperative Mining Company (hereinafter "Goldfield"), or (C) any officer, directors, agent, employee, promoter, transfer agent, registrar, attorney, accountant, engineer, designer, technician, printer, appraiser, surveyor, geologist, finder, broker, underwriter, lender, factor, banker, adviser, counselor, contracting part, offeror or offeree, assignor or assignee, attorney-in-fact or other representative, of either Select or Goldfield, including for example, but not limited to...."

The subpoena while addressed manifestly to those who may have official books and records of Select in a representative capacity, does not leave it clear that only official books and records of Select are being requested. Moreover, the subpoena does not set forth a period of time, is overbroad, vague and ambiguous, particularly in paragraph (C), and apparently is

intended as a dicovery device. See United States v. Marchisio, 344 F2d 653 (CA2, 1965); United States v. Murray, 297 F2d 812-822 (CA2, 1963). Both corporations and individuals are protected against unreasonable demands by the provisions of the Fourth Amendment. Boyd v. United States, 6 S.Ct. 524; Silverthorne Lumber Co. Inc. v. United States, 40 S.Ct. 182. Also see Application of Radio Corp. of America, 13 F.R.D. 167, 171 (DCNY), as discussed supra.

Moreover, it is within the discretion of the court to require production prior to trial. See United States v. Murray, supra: United States v. Kiamie, 18 F.R.D. 421 (DCNY); United States v. Ward, 120 F.Supp. 57 (DCNY): United States v. Carter, 15 F.R.D. 367. The court in United States v. Ferguson, 37 F.R.D. 6, 8 held that the court's discretion must be invoked in advance if a subpoena is to be made returnable in advance of trial. The burden should be on the prosecution to show good cause for production prior to trial, and the prosecution must show the documents are evidentiary and relevant, and that the application is made in good faith and is not intended as a general fishing expedition. United States v. Iozia, 13 F.R.D. 335, 338 (DCNY). Also United States v. Dean, 266 F.Supp. 159.

Consequently, the subpoena duces tecum (Exhibit "B") should be quashed, or seriously modified to limit it to official books and records having a direct relevancy and admissibility with respect to the trial of this indictment. The prosecution moreover should show good cause for pretrial production.

/s/ JOSEPH B. EHRLICH

Sworn to before me this
26 day of August, 1975.

/s/ Notary Public

BARBARA D. HALLETT
NOTARY PUBLIC, State of New York
No. 30-1281250
Qualified in Nassau County
Commission Expires March 30, 1977

LAW OFFICES
ROSENBERG, ROSENBERG
AND ROCKMAN

CS:

A 111

ERNEST R. MULLENAX
6500 Wilshire Blvd.
Apt. 205
Oklahoma,City, OK

601

2nd September 75 10:00

fore

Boyd, et al.,

SEE ATTACHED RIDER

August 15, 1975

PAUL J. CURRAN

HOWARD S. SUSSMAN 731
Tel: (212) 791-1921

A

HSS:dm

A 112

RIDER

All documents of whatsoever kind and wherever located which refer or relate in any way, expressly or impliedly, to any of

(A) SELECT ENTERPRISES, INC. (hereinafter "Select"), (B) STATE NATIONAL BANK OF ALABAMA, DECATUR, ALABAMA, (C) CONTINENTAL GENERAL CORPORATION, (D) JOINT TALENT GROUP, INC. (E) CONTINENTAL GENERAL LIFE, a corporation, (F) DONALD E. ROUSE, (G) RAYMOND L. LEWIS or RAY LEWIS, (H) AMERICAN INVESTORS LIFE, a corporation, (I) MODERN AMERICAN LIFE, a corporation, (J) MIDWEST NATIONAL LIFE, a corporation, (K) FOUNDERS OF AMERICAN INVESTMENT, a corporation, (L) DIVERSIFIED PRODUCTS CORPORATION, (M) GOLDEN ERA INVESTMENT CORPORATION, (N) DIVERSIFIED ENTERPRISES OF AMERICA, a corporation, (O) JOE TRUMAN BOYD or JOE BOYD, (P) JAMES CALVIN JOINER or JJ. JOINER, (Q) SAM HALE, (R) W.C. CHAPEL, (S) REX LEE, (T) HELEN LEE, (U) GREATER CONTINENTAL HOLDING AND MARKETING COMPANY, (V) IMPERIAL NATIONAL, INC., (X) INTERNATIONAL DEVELOPMENT INC., (Y) THOMAS ZAMMIT, (Z) 2532 N. DELLROSE, WICHITA, KANSAS, (AA) PIG'N WHISTLE HOLDING CORPORATION, (BB) MAX RIFFEE or F.M. RIFFEY, (CC) HOME STATE BANK, MACPHERSON, KANSAS, (DD) EAST SIDE NATIONAL BANK AND TRUST CO. or EAST SIDE BANK & TRUST N.A., WICHITA, KANSAS, (EE) UNION NATIONAL BANK, WICHITA, KANSAS, (FF) AUGUSTA STATE BANK, AUGUSTA, KANSAS, (GG) HAYSVILLE STATE BANK, HAYSVILLE, KANSAS, (HH) TOWN AND COUNTRY BUSINESS TRUST, WICHITA, KANSAS, (II) RICHARD F. BURCH AND CO., (JJ) 3025 MASSEY ROAD, VESTAVIA HILLS, ALABAMA, (KK) 2117 VESTRIDGE LANE, BIRMINGHAM, ALABAMA, (LL) ANY PERSON acting or purporting to act for Select as officer, director, agent, employee, promoter, transfer agent, registrar, attorney, accountant, engineer, designer, technician, printer, appraiser, surveyor, geologist, finder, broker, underwriter, lender, factor, banker, adviser, counselor, attorney-in-fact, or representative of any other kind, whether similar or dissimilar to any of the foregoing or (MM) Any Financial statement of ERNEST R. MULLENAX, including, for example, but not limited to (1) certificates of incorporation (or equivalent documents), and all amendments thereof, (2) documents filed with the Secretary of State (or equivalent officer) of any State or Commonwealth, (3) minute books and minutes, (4) stock ledgers and transfer books, including stubs, (5) certificates of stock, including stock powers, assignments or similar documents, (6) By-Laws (or equivalent documents), and all amendments thereof, (7) books of account, ledgers and other financial records such as bills received and invoices issued, (8) certified and uncertified financial statements, including all drafts of any work papers for any thereof, (9) income tax returns and other records, Federal, State and local, (10) documents filed with or delivered to any Federal, State or local authority including but not limited to (a) the United States Securities and Exchange Commission, (b) any State Securities commission, authority or other body, and (c) any State licensing or regulatory commission, authority or other body, (11) opinion letters, whether or not so denominated, received from any attorney, (12) opinions and appraisals from any land appraiser, surveyor, geologist, stock or securities appraiser, business consultant, or other such person, firm or corporation, (13) assessments or appraisals for tax or other purposes, (14) opinions and certifications from any accountant, and all drafts of and workpapers for any thereof, (15) correspondence and memoranda, internal and external, (16) bank statements, checks (face and back), deposit, withdrawal and transfer orders, and requests for certified or cashiers checks for any bank including but not limited to those named above, (17) notes, bonds, debentures and other evidences of indebtedness including but not limited to indebtedness to the persons, firms and corporations named above, (18) deeds, contracts, agreements, memoranda of understanding, memoranda of

intent, offer letters, assignments and other such documents, whether or not signed, and all drafts of any thereof, including but not limited to such documents which relate or refer to any of (a), Select stock certificates Nos. 1938, 1939 and 1940 in the name of J.J. Joiner, (b) Select stock certificates No. 1979 in the name of Joe Boyd, (c) Pig'N Whistle Holding Corporation stock certificates Nos. 1086 and 1087 in the name of Sam Hale, (d) aircraft or airplane and automobiles of ERNEST R. MULLENAX, (e) monies due to ERNEST R. MULLENAX from business associates and friends, (f) monies due to ERNEST R. MULLENAX for services from corporations or others, as commissions, salaries or otherwise, (g) homes and other real estate of ERNEST R. MULLENAX, (h) oil wells of ERNEST R. MULLENAX, (i) charm schools or beauty schools or franchises, (j) loans, extensions of credit, and other credit transactions, (18) telephone bills, including statements of calls placed,

A 114

SOUTHERN DISTRICT OF NEW YORK

TO any Officer, Director, Attorney, Agent or Employee of BOARD OF CORRECTIONS, etc. CREETINGS:

WE COMMAND YOU that all and singular business and excuses being laid aside you and each of you appear and attend before the Judge of the District Court of the United States for the Southern District of New York, at a District Court to be held in Court room No. 601 in the United States Courthouse, Foley Square, in the Borough of Manhattan, City of New York, in and for the said Southern District of New York, on the 2nd day of September, 1975, at 10:00 o'clock in the forenoon, to testify and give evidence in a certain cause now pending undetermined in the said District Court of the United States for the Southern District of New York, between the United States of America, Plaintiff, and Boyd,

Defendant, on the part of the United States, and not depart the Court without leave thereof or of the District Attorney, and that you bring with you and produce at the time and place aforesaid the following:

(SEE ATTACHED RIDER)

and all other deeds, evidence, and writings which you have in your custody or power concerning the premises. And failure to attend and produce said documents, you will be deemed guilty of a contempt of Court, and liable to pay all loss and damages sustained thereby to the party aggrieved, and forfeit Two Hundred and Fifty Dollars in addition thereto and to other penalties of the Law.

Dated: New York, N. Y. August 19, 1975

Raymond F. Burghardt
Clerk.

Paul J. Curran

PAUL J. CURRAN
United States Attorney for the Southern District of New York.

Note: Report at Room 450. In order to secure your witness fees and mileage, it is necessary that you return this Subpoena and present the same at the United States Attorney's Office, Room 450, upon each day on which you attend Court as a witness.

Assistant U. S. ATTORNEY MACDONALD Room 725
Tel.: (212) 791-0005

ONLY COPY AVAILABLE

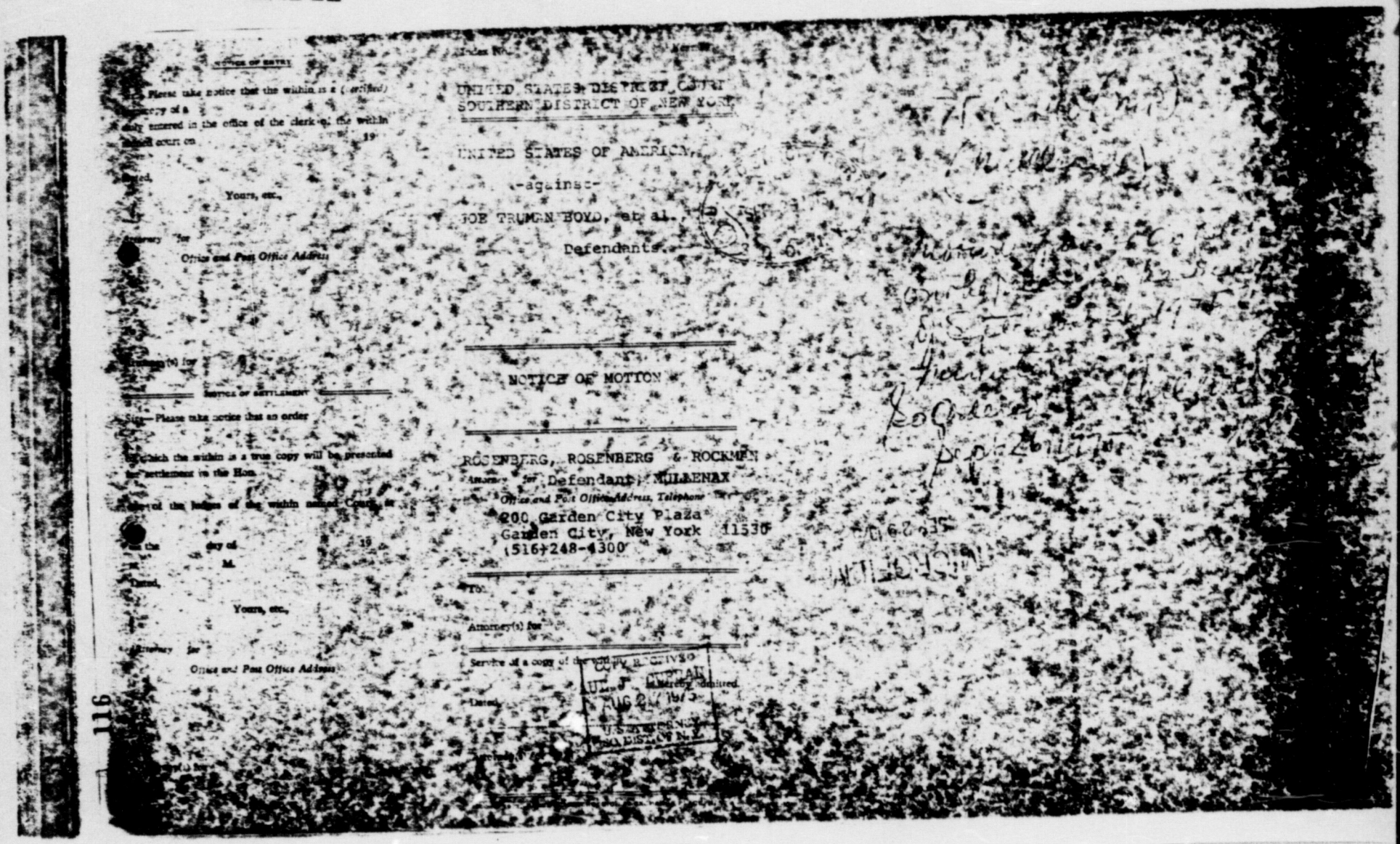
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RIDER

All documents of whatsoever kind and wheresoever located which relate or relate in any way, expressly or impliedly, to any of (A) SELECT INVESTMENTS, INC. (hereinafter "Select"), (B) GOLDFIELD CANDELARIA COOPERATIVE MINING COMPANY (hereinafter "Goldfield"), or (C) any officer, director, agent, employee, promoter, transfer agent, registrar, attorney, accountant, engineer, designer, technician, printer, appraiser, surveyor, geologist, finder, broker, underwriter, lender, factor, banker, adviser, counselor, contracting party, prospective contracting party, offeror or offeree, assignor or assignee, attorney-in-fact or other representative, of either Select or Goldfield, including, for example, but not limited to (1) certificates of incorporation (or equivalent documents), and all amendments thereof, (2) documents filed with the Secretary of State of Nevada or the clerk of Washoe County, Nevada, (3) minute books, (4) stock ledgers and transfer books including stubs, (5) certificates of stock, (6) By-Laws (or equivalent documents), and all amendments thereof, (7) books of account, ledgers and other financial records such as bills received and invoices issued, (8) certified and uncertified financial statements, including all drafts of and workpapers for any thereof, (9) income tax returns and other records, Federal, State and local, (10) documents filed with or delivered to any Federal, State or local authority including but not limited to (a) the United States Securities & Exchange Commission, (b) any State Securities Commission, authority or other body (c) any State licensing or regulatory commission, authority or other body (11) opinion letters, whether or not so denominated, received from any attorney including but not limited to Robert E. Ford, Selwyn Weber and Roger Bissett, and all drafts of any thereof, (12) opinions and appraisals from any land appraiser, surveyor, geologist, or other such person, firm or corporation, including but not limited to Tom L.White, Marvin G. Marquardt, George D. Harris, Joe Brown, Richard Cobb, M.S. Reynolds, and C. Meissner, and all drafts of any thereof, (13) assessments and tax bills for any land, building, mineral claim or mine, or other asset, (14) opinions and certifications from any accountant, including but not limited to Bill G. Elms, Don Johnson and W. Wayne Barnett, and all drafts of any thereof, (15) correspondence and memoranda, internal and external, (16) bank statements, checks (face and back), deposit, withdrawal and transfer orders, and requests for certified or cashiers checks for any bank, including but not limited to those of the First National Bank in AToka, and the First Bank in Atoka, Atoka, Oklahoma, (17) notes, bonds, debentures and other evidences of indebtedness, (18) checks, contracts, agreements, memoranda of understanding, memoranda of intent, offer letters, assignments and other such documents, whether or not signed, and all drafts of any thereof, including but not limited to such documents which relate or refer to any of (a) land in Imperial County or Riverside County, California, (b) Diamond Bros. Company, (c) Riverside Hotel, Reno, Nevada, (d) oil and gas properties, (e) land and buildings in Midland, Texas, (f) land and buildings in Dallas, Texas, (g) mining claims, mines, mineral deposits or other land in New Mexico, (h) sulphur deposits in Texas and (i) charm schools or beauty schools or franchises,

ONLY COPY AVAILABLE

ONLY COPY AVAILABLE



NOTICE OF ENTRY

Please take notice that the within is a (certified) copy of a entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

NOTICE OF SETTLEMENT

Please take notice that an order of which the within is a true copy will be presented for settlement to the Hon. one of the judges of the within named Court, at on the day of 19 at M.

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

Service of a copy of the within is hereby admitted.

Dated,

Attorney(s) for

Index No. Year

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

JOE TRUMAN HOYD, et al.,

Defendants.

NOTICE OF MOTION

ROSENBERG, ROSENBERG & ROCKMEN

Attorneys for Defendant MILANAX

Office and Post Office Address, Telephone

200 Garden City Plaza
Garden City, New York 11530
(516)248-4300

To

Attorney(s) for

RECEIVED
COPY
U.S. ATTORNEY
Southern District of N.Y.
AUG 2 1971

116

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

JOE TRUMAN BOYD, et al.,

Defendants.

NOTICE OF MOTION

75 Cr 140 (MP)

----------x

S I R :

PLEASE TAKE NOTICE that upon the indictment herein, the affidavit of JOSEPH B. EHRLICH, sworn to the 26th day of August, 1975, and all other papers and proceedings heretofore had herein, a motion will be made before the HON. MILTON POLLACK, United States District Judge, in the United States Court House for the Southern District of New York, Foley Square, New York, New York, at a time and place to be fixed by the Court, for an order pursuant to Rule 8 of the Federal Rules of Criminal Procedure severing the defendant, ERNEST R. MULLENAX, from his co-defendants and for renewal and reconsideration of defendant, MULLENAX'S original motion for severance pursuant to Rule 14 of the Federal Rules of Criminal Procedure on the ground that discovery of documentation of the prosecution now clearly evidences that a joint trial with his co-defendants will be contrary to his Fifth Amendment rights, and for such other and further relief as to this Court may seem just and proper.

Yours, etc.

ROSENBERG, ROSENBERG & ROCKMAN
Attorneys for Defendant,
ERNEST R. MULLENAX
Office and Post Office Address
200 Garden City Plaza
Garden City, New York 11530
(516) 248-4300

TO: PAUL J. CURRAN, ESQ.
United States Attorney
Southern District of New York
One St. Andrews Plaza
New York, New York

LAW OFFICES
ROSENBERG, ROSENBERG
AND ROCKMAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA,

AFFIDAVIT

-against-

JOE TRUMAN BOYD, et al.,

Defendants.

----------x

STATE OF NEW YORK)
) SS.:
COUNTY OF NASSAU)

JOSEPH B. EHRLICH, being duly sworn, deposes and says:

I am associated with the law firm of ROSENBERG, ROSENBERG & ROCKMAN, attorneys for the defendant, ERNEST R. MULLENAX. I make this affidavit in support of his motion for severance pursuant to Rule 8 of the Federal Rules of Criminal Procedure and for renewal of argument and reconsideration of MULLENAX'S original motion for severance from his co-defendants pursuant to Rule 14.

On August 14 and August 20, 1975, I inspected and received photocopies of discovery materials with respect to the defendant, MULLENAX. The documentation evidences that the prosecution's case against MULLENAX is solely with regard to the purported illegal pledging of the stock of Select Enterprises, Inc. in connection with loans.

In accord is the indictment itself which factually connects the defendant MULLENAX with the charges solely with the allegation that he "sold, pledged and otherwise disposed of Select stock to lenders, factors and purchasers."

The indictment, however, covers a vast realm of charges and factual allegations. In essence, it speaks of the creation of a corporate shell and the manipulation of its stock.

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AND ROCKMAN

Without doubt, the great weight of the documentation and evidence of the prosecution will be in connection with this part of the charges. The trial is expected to last a period of four to six weeks. To have the jury consider and separate MULLENAX'S case from the mass of evidence against his co-defendants will surely result in prejudice to him in addition to great personal and economic hardship from the length of the trial.

The prosecution's case against MULLENAX surrounds loans purportedly obtained by him with the use of Select stock from the State National Bank, Decatur, Alabama; Home State Bank, McPherson, Kansas, and the Town and Country Business Trust in Witchita, Kansas. A separate trial against MULLENAX would be at most three to four days, would not prejudice the prosecution, and would not cause an economic hardship to the Government.

MULLENAX'S motion for severance is governed and mandated by Rules 8 and 14 of the Federal Rules of Criminal Procedure which state as follows:

Rule 8

> "(a) Joinder of Offenses. Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.
>
> "(b) Joinder of Defendants. Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count."

Rule 14

> "If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney for the government to deliver to the court for inspection in camera any statements or confessions made by the defendants which the government intends to introduce in evidence at the trial."

The interrelation of these controlling principles was succinctly described in King v. United States, 355 F2d 700,703 (CA1, 1966):

> "Rule 8 is an attempt to set the limits of tolerance, and any joinder which does not fall within is per se impermissible....In addition, Rule 14 provides that, even within the rule (Rule 8), the court may sever for trial if special prejudice appears."

See also Ingram v. United States, 272 F2d 567, 570 (CA4,1959).

These rules reflect an accomodation between the contending notions of expeditious law enforcement and the inherent detriment to an accused encountering a trial of multiple offenses and defendants. A leading commentator aptly points out (8 Moore's Federal Practice - Cipes, Criminal Rules, Par. 8.02 (1), p.8 (1970)):

> "The way in which a prosecutor chooses to combine offenses or defendants in a single indictment is perhaps second in importance only to his decision to prosecute. Whether a defendant is tried en masse with many other participants in an alleged crime, or in a separate trial of his own, will often be decisive of the outcome."

As stated, the separate conspiracies, in terms of the creation of a corporate shell, and the manipulation of its stock do not constitute the "same act or transaction or in the same series of acts or transactions" as the fraudulent distribution of stock of Select as required by Rule 8 of the Federal Rules of Criminal Procedure.

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ROSENBERG, ROSENBERG
AND ROCKMAN

MULLENAX would suffer the same prejudice as was submitted on behalf of the defendant Brookshire by his counsel. It is noted that this Court granted the defendant Brookshire's motion for a severance, and that the posture of Brookshire and MULLENAX with reference to their motions for severance are closely aligned. The prosecutions case against MULLENAX is not connected with the charges taken in toto in any permissible way sufficient to outweigh the basic prejudice which accrues from the joinder of the offenses and of the defendants. See McElroy v. United States, 164 US 76, 81, a case decided under a statute substantially the same as the present Rule 8 of the Federal Rules of Criminal Procedure.

Aside from Rule 8, the nature of the indictment and the differences in the charges set forth require a severance under Rule 14. It is apparent that undue prejudice resulting to the defendant MULLENAX from the spill over of testimony, the aura of guilt by association and such limiting instructions as the Court may give, would result in the denial to the movant of a fair trial, contrary to constitutional mandate under the Fifth Amendment to the United States Constitution.

For all the above, the severance of MULLENAX would be in the interests of justice and consistent with his Fifth Amendment due process rights.

/s/ JOSEPH B. EHRLICH

Sworn to before me this
26th day of August, 1975.

/s/ Notary Public

BARBARA D. HALLETT
NOTARY PUBLIC, State of New York
No. 30-1231250
Qualified in Nassau County
Commission Expires March 30, 19[illegible]

LAW OFFICES
ROSENBERG, ROSENBERG
AND ROCKMAN

MP A 122

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	
versus	
JOE TRUMAN BOYD et al.,	75 Crim 140
Defendants.	

New York, N. Y.

September 16, 1975 - 10:00 a.m.

Before

HON. MILTON POLLACK,

District Judge.

APPEARANCES:

PAUL J. CURRAN, Esq.,
United States Attorney for the Southern District of New York
W. CULLEN MacDONALD, Esq., and
HOWARD S. SUSSMAN, Esq.,
Assistant United States Attorneys

JOSEPH B. EHRLICH, Esq.,
Attorney for Defendant Mullenax

PAUL K. ROONEY, Esq.,
Attorney for Roger Bissett

MICHAEL STOCKNER, Esq.,
Attorney for Defendant Goodloe

(Continued)

APPEARANCES: (Continued)

MARVIN SEGAL, Esq.,
Attorney for Defendant Boyd

ANTHONY L. TERSINI, Esq.,
Attorney for Defendant Ford

- - -

THE COURT: Are there any other changes of plea?

MR. MacDONALD: Your Honor, with respect to the third change, the lawyer had to go down to 100 Centre Street and is due back here in a few minutes.

THE COURT: All right. We will wait until he comes back.

MR. MacDONALD: Mr. Mullinax, your Honor, had two motions which were postponed to this morning.

THE COURT: All right. Mr. Ehrlich?

MR. EHRLICH: I would like to thank the Court for the courtesy extended during the time I was bedridden with pneumonia, and, as I told the Court, I welcome this opportunity to face Mr. MacDonald. I was associated with Mr. Brill for three years, and I often crossed with the Government while Mr. MacDonald was representing the Government.

However, in connection with this case today, your Honor, I would point out that the subpoena duces tecum annexed to Mr. Mullenax's motion to quash as Exhibit A -- my previous experience indicates that I have never seen such

a blatant attempt to circumvent the defendant's rights.

THE COURT: How much of it is appropriate? Let's get down to cases here. I am not interested in characterizations.

MR. EHRLICH: May the subpoena be offered as an exhibit?

THE COURT: You don't have to do that. If it gets to the Court of Appeals, they will know all about it.

MR. EHRLICH: This subpoena is addressed to Mr. Mullenax personally, and among other documents it calls for records involving the State & National Bank of Alabama, Decatur, Alabama; East Side National Bank; Town & Country Business Trust in Wichita, Kansas.

Your Honor, I spent much time having discovery proceedings over at the offices of the United States Attorney.

THE COURT: How much of those records does he hold in a representative capacity? Let's get down to what is important here. Everybody knows that he is not being asked to produce anything that is his personal records.

Now, I don't know if it was reported to you by your associated or not, but let's findout if he has papers producible under the subpoena, and if he has, let's find out why he should not produce them.

MR. EHRLICH: Mr. Mullenax has given me documenta-

tion, and I have interpreted that documentation not to be held by Mr. Mullenax in a custodial capacity. I have to leave it to the Court, perhaps, if it wishes to inspect these documents in camera.

Now, certain of the documents, for instance, are in Select Enterprises. However, they are not official documents. They were not held by Mr. Mullenax in a representative, corporate or custodial capacity. They were held by him in a personal capacity, and, as your Honor knows, Mr. Mullenax is scheduled to go to trial on September 29th, and I don't think he has to assist in the prosecution of this case by supplying any personal documentation.

THE COURT: We know about that.

MR. EHRLICH: Secondly, let me -- Does your Honor want to consider each subpoena separately?

THE COURT: Well, in some way I suppose I will have to make an examination of the documents so as to ascertain whether they are or are not his personal papers.

MR. EHRLICH: I understand that, and I have those documents here in court today.

THE COURT: Do you have them segregated? I will look at them, and you will come up to my chambers and call for them after I have had a chance to look them over.

MR. EHRLICH: Yes, your Honor. I will hand them

over to the Court.

I also note that part of this motion was that this subpoena is over-broad, and I think that the case law holds that the prosecution must show for pre-trial production some relevancy and materiality of the vast array of documents with various banks and corporations called for.

However, I emphasize that this subpoena was addressed to Mr. Mullenax in a personal capacity. I would also note for the record, your Honor, that although Mr. Mullenax graciously consented to have the service of the subpoena upon our offices, we never received a complete copy of the first page, and, as Mr. Mullenax's attorney --

THE COURT: Did you ask for it?

MR. EHRLICH: Yes; I did, your Honor.

THE COURT: And they would not give it to you?

MR. EHRLICH: It wasn't that they wouldn't give it to me.

THE COURT: You know, a lot of things are accomplished by a very soft and polite question.

MR. EHRLICH: I did ask for that document. I don't want to make it a larger issue than anticipated, but as an attorney I have to discharge my obligations.

THE COURT: Yes; you have got to discharge the obligations, but it doesn't mean that you've got to make the

meter run unnecessarily. If you haven't got a piece of paper and you ask for it by saying to Mr. MacDonald, "Let me have it," you discharge your obligation much better by using your tongue and getting the information.

MR. EHRLICH: Yes, your Honor. I did ask for that front page.

THE COURT: I don't see why you take the time of all these people in the courtroom, lawyers and others, to call something to my attention when you could accomplish the whole thing in just a two-second request.

MR. EHRLICH: I will comply with your Honor's ruling.

THE COURT: I am indicating that I don't expect this type of thing to happen during the trial, because it is of a delaying character.

MR. EHRLICH: I understand that, your Honor.

THE COURT: And a member of the bar of this court is expected to assist in the speedy disposition of cases.

MR. EHRLICH: Mr. Mullenax consented to the service of the subpoena upon our offices, saving the Government untold expense and time. I only brought it to the Court's attention, your Honor, because, as an attorney, I need the first page before any documents are ordered turned over to the prosecution.

With respect to the subpoena attached as Exhibit B, your Honor, although I have no -- although I admit that the prosecution is entitled to all official books and records of a corporate enterprise, and that subpoena is addressed to any officer, director, attorney or agent of the office of Select Enterprises, Inc., I do have trouble with the language of the subpoena, which, for example, in part reads:

"All documents of whatsoever kind and wherever located which refer or relate in any way, expressly or impliedly, to any of (c) any officer, director, agent, employee, promoter, transfer agent, registrar et ceters."

If the subpoena calls for the official books and records of Select Enterprises, then there is no opposition on this side. However, it seems that the scope of the subpoena is confusing in that respect.

THE COURT: Do you want anything more than the official books and records, Mr. MacDonald?

MR. MacDONALD: No, your Honor.

THE COURT: All right. That's settled.

When will they be turned over?

MR. EHRLICH: The official books and records of Select?

THE COURT: Yes.

MR. EHRLICH: That is part of the materials I am

handing over to your Honor. There is a very touchy construction of which may be official books and records.

THE COURT: Which do you say are the official books and records?

MR. EHRLICH: I don't say any of the documents held by Mr. Mullenax are not official documents of Select Enterprises.

THE COURT: In other words, if I find that they are official records, you consent to have them turned over?

MR. EHRLICH: No, your Honor.

THE COURT: You object to having official records turned over?

MR. EHRLICH: Yes.

THE COURT: For what reason?

MR. EHRLICH: Because my position is that they are personal books and records.

THE COURT: But I say that if I find to the contrary and find that they are official, you consent to having them turned over, don't you?

MR. EHRLICH: I will turn them over. I will abide by your Honor's ruling, but I don't want the record to reflect that I consent to it.

THE COURT: You agree that official records should be turned over under the subpoena?

MR. EHRLICH: Yes. Official books and records, properly --

THE COURT: I will examine the books and records. Have you indicated which you think are official and which are not?

MR. EHRLICH: My position is that they are all personal documentation.

THE COURT: What is Mr. Mullenax's position in the corporation?

MR. EHRLICH: He had no official position in Select.

THE COURT: How did he get these corporate documents?

MR. EHRLICH: These were documents -- this is correspondence that was mailed to him by the corporation.

THE COURT: How did they become personal documents if the corporation mailed them to him?

MR. EHRLICH: Because by the very nature of the contents, they involved personal transactions. Also, official books and records of a corporation are kept in a -- by one who is an official or representative in a custodial capacity.

THE COURT: Are you telling me these are copies? Is that what you are trying to tell me?

MR. EHRLICH: Yes; these are copies.

THE COURT: Copies?

MR. EHRLICH: But not only copies. For example, if RCA Corporation writes me a letter concerning a business matter, that is a personal document. I am holding that in a personal capacity. The copy, the carbon --

THE COURT: In what capacity did Mr. Mullenax receive copies of these official papers?

MR. EHRLICH: In a personal capacity. That's my construction of these.

THE COURT: What is that personal capacity? I don't understand. How did he get hold of corporate documents?

MR. EHRLICH: This is correspondence, your Honor, between the Corporation and Mr. Mullenax.

THE COURT: And he had no official position with the company?

MR. EHRLICH: No, your Honor.

THE COURT: All right. I will look at the papers.

MR. EHRLICH: Yes, your Honor.

Also, part of the documentation given to me by Mr. Mullenax is documentation concerning corporations that originated in 1973 and 1974. If your Honor will note under the subpoena that was attached as Exhibit A, it calls for certificates of incorporation.

Again, I just want to reiterate that it is part of my position that the subpoena is over-broad and specifies no period of time. It just asks for documents, all documents --

THE COURT: During your absence, that was limited to the period of the indictment.

MR. EHRLICH: Yes.

THE COURT: Last week, the period of time was limited to the period of the indictment.

MR. EHRLICH: I am sorry, your Honor. I didn't kow that. Even if it is limited to the period of the indictment, still, a request for certificates of incorporation is not proper, because, first of all, the subpoena has to be addressed to someone with respect to the specific person. If there is just a blanket request -- these subpoenas cannot be used as a discovery device, and from my experience with the subpoena it seems to me the prosecution has intended to use them as a discovery device, and therefore it must be severely limited.

THE COURT: How would you limit it?

MR. EHRLICH: Well, I think this provision has to be quashed. All that are asked for really are personal papers. I don't think there is any real problem there. And I says "Any financial statement of Mullenax, including but not limited to (1) certificates of incorporation et cetera,

and I don't think it is proper, and I think there has to be a showing by the prosecution with respect to that kind of evidence.

THE COURT: You can't divine from the nature of the indictment whether these things have relevancy to the matters set forth in the various counts of the indictment?

MR. EHRLICH: Certificates of incorporation, your Honor? No; I have not been able to. I have certificates of incorporation.

THE COURT: You are dealing with stock in this case, aren't you?

MR. EHRLICH: Stock of Select Enterprises, Inc.

THE COURT: Yes? And what you have in mind is that this might call for charters of other corporations; is that right?

MR. EHRLICH: It seems to call for all certificates of incorporation. I think the prosecution has to make a showing -- especially at this stage of the critical proceedings -- before the Court orders any kind of documents like these turned over. It is not a discovery device. I don't think such blanket requests are proper.

THE COURT: Is there anything else you want to call to my attention?

MR. EHRLICH: Yes, your Honor. I have a renewal of

a motion for severance, and also pursuant to Rule 8 of the Federal Rules of Criminal Procedure.

Your Honor, the first time I visited the offices of the United States Attorney with respect to discovery, I only saw what I might properly characterize as a limited amount of documentation allegedly with respect to Mr. Mullenax. After my original motion of severance was filed, I inspected a large array of documentation which the Government proposes to offer during the course of the trial. This documentation really evidences that the essence or really the entire assertion by the prosuection against Mr. Mullenax is that he allegedly illegally gave banks Sslect stock as collateral and purportedly knew that the value of the Select stock was worthless or less than represented to be.

Now, as your Honor knows, it is a large indictment, and it even encompasses a very broad spectrum of charges. To summarize the creation of a corporate Shell, Select Enterprices, the manipulation of stock --

THE COURT: That is not broad. It says the stock was no good, and it was handed out freely. What's big about that?

MR. EHRLICH: Mr. Mullenax is being charged, if anything, in connection with the distribution of Select stock in a very limited way.

THE COURT: He is charged with being a co-conspirator, isn't he?

MR. EHRLICH: He is charged as a co-conspirator. However, the evidence from the discovery inspection I made appears to indicate that the evidence that is going to be submitted with respect to the creation of Select stock and the manipulation of the stock is not going to have any bearing or any connection, is not going to mention the name of Ernest R. Mullenax.

As your Honor knows, as the Court knows, it is expected to be a lengthy trial. Now, my assertion again is: for a jury to sit there and hear a wealth of evidence against co-defendants with respect to the manipulation of this company's stock is going to put a great burden on the jury to really sift this mass of evidence and afford Mr. Mullenax a fair trial.

Coupled with this, I understand one defendant is appearing pro se, and the Supreme Court has granted the defendant a right to represent himself, but I don't think that that right implicitly states that self-representation can possibly prejudice co-defendants in the case, and that, coupled with the fact that there is going to be an array of evidence with respect to the creation of the company, the manipulation of the stock of the company, is going to result

in the jury being hard pressed to really make a fair and impartial determination with respect to Mr. Mullenax, and I think there will be a spill-over of the testimony, and for those reasons I have just asserted, plus the reasons that I have included in my motion for a severance, I request that the motion for a severance be granted.

A separate trial I don't believe would last more than three to four days. The Government has a specific narrowed group of witnesses that it expects to offer against Mr. Mullenax, and I think the interests of justice would best be met by the granting of severance.

I understand one of the other co-defendants has already been granted a severance, and possibly their trials could be combined, and I really believe it would be in the interests of justice to grant Mr. Mullenax's motion for a severance.

THE COURT: Mr. MacDonald?

MR. MacDONALD: Your Honor, we reiterate and we affirm our original papers with respect to the proof concerning the defendant Mullenax. The Government's proof is qualitatively and quantitatively different in the case of the defendant Brookshire and the defendant Mullenax with respect to their participation in the conspiracy. We oppose the granting of a severance, and we disagree with counsel's

characterization of the discovery materials which he has examined.

THE COURT: What about the subject of relevancy of the documentation called for?

MR. MacDONALD: On the subpoenas duces tecum, your Honor, we will acquiesce in the assertion of privilege in respect of personal documents. We would solicit the aid of the Court in examining the selected documents which are characterized as being in a personal capacity only, and we would consider the subpoenas modified accordingly with respect to the documents to be produced in the courtroom.

THE COURT: All right. The motion for a severance is denied. I will examine the papers and consider them in connection with the motion for quashing the subpoenas.

MR. EHRLICH: Your Honor, I am not quite certain I heard Mr. MacDonald correctly. Should I only submit the papers with respect to Select stock? Because I believe that he consented to a modification of the subpoena to exclude the other documentation. Or did I mis-hear?

THE COURT: I thought that what Mr. MacDonald was saying was that he agreed with the procedure of having me examine all these documents that you've got there, in camera. Did you say anything different?

MR. MacDONALD: No, sir. I solicit your aid and

thank you for it.

THE COURT: He agrees with you to put the burden on me.

MR. EHRLICH: I am sorry it has to be done, your Honor.

THE COURT: All right. Submit the papers.

MR. EHRLICH: Your Honor, if I may, I have one additional thing I would like to bring up right now.

During the course of my discovery, the prosecution has served bank documentation. Their internal memorandum concerning the loans purportedly obtained by Mr. Mullenax are included. The first time I asked Mr. MacDonald for that documentation I believe he said it was covered by the Bank Secrecy Act.

MR. MacDONALD: I think I can save time. Counsel has not had an opportunity to examine the recent trial exhibits, and I think most of his request is covered within the materials which are now available.

THE COURT: While you were out sick, they were getting documents together for you.

MR. EHRLICH: Right. They are goin go keep me busy.

THE COURT: Pass the papers up here.

MR. EHRLICH: Yes, your Honor.

(Discussion followed relating to another defendant.)

MR. EHRLICH: Your Honor, I am sorry to take up any more of the Court's time, but I'm not clear as to the procedure.

Do, your Honor, wish me to appear in court tomorrow morning?

THE COURT: No. I will look at these. I was going to say I would look at them before lunch if I could. There aren't too many, and you can come upstairs and pick up what I decide to agree with you on and point out what I decide to disagre with you on.

If you want to come back tomorrow, that's all right with me. You can come back later in the week.

MR. EHRLICH: No. I don't want to waste any more time. The only reason I suggested tomorrow is that my physician suggests I would be better off in bed today.

THE COURT: Why don't you come back later in the week?

MR. EHRLICH: No. I will come back tomorrow morning.

THE COURT: The only objection I have to tomorrow morning is that there will be a criminal case on trial, and you may get hung up waiting around.

MR. EHRLICH: Then I think it's best that I wait

and come up to your Honor's chambers at two o'clock.

THE COURT: That's when the trial starts.

MR. EHRLICH: Can your Honor suggest any time when I can visit your chambers?

THE COURT: Let's see. This is Tuesday. Why don't you come in Thursday afternoon or Friday afternoon?

MR. EHRLICH: All right. I will call your secretary and make an appointment.

THE COURT: At the end of the day, around four or four-thirty, something like that, you can come up.

MR. EHRLICH: Thank you very much, your Honor.

- - -

ONLY COPY AVAILABLE

A 141

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

JOE TRUMAN BOYD, et al,

Defendants.

NOTICE OF MOTION

ROSENBERG, ROSENBERG & ROCKMAN
Attorney for Defendant, MULLENAX
Office and Post Office Address, Telephone
200 Garden City Plaza
Garden City, New York 11530
(516)248-4300

To

Attorney(s) for

Service of a copy of the within

Dated

COPY RECEIVED
AUG 27 1975
ATTORNEY(S)

hereby admitted.

A 142

Rosenberg, Rosenberg & Rockman

Attorneys and Counselors at Law

HARRY ROSENBERG (1915-1973)
GEORGE ROCKMAN
MARC A. ROSENBERG
MICHAEL M. PERLMAN
HOWARD A. SCHUMINSKY
JOSEPH B. EHRLICH

Two Hundred Garden City Plaza
Garden City, New York 11530

516-248-4300

September 24, 1975

Honorable Milton Pollack
United States District Judge
United States Court House
Foley Square
New York, New York

HAND DELIVERY

Re: United States v. Mullenax
75 Cr 140 (MP)

Dear Judge Pollack:

We were advised on September 16, 1975 that the prosecution had marked Exhibits 1 to 324 inclusive for identification and that photocopies of the same were available to us. On September 19, 1975 the aforesaid exhibits were picked up by us at the United States Attorney's offices and since that time we have arduously and diligently been reading through the wealth of documentation, most which never before has been seen by counsel for the defendant Mullenax.

As attorneys for the defendant Mullenax, we must in his behalf file objection in that at least 50% of the marked exhibits never were produced to us for inspection. More importantly of the exhibits marked for identification which may be attempted to be employed by the Government in Mullenax's prosecution (92, 102-108, 109-119, 120-131, 268-297, 298-310) on information and belief the following exhibits marked for identification have never been before September 19, 1975 seen by Mullenax's counsel: part of 108, 117, 130, 131, 268-281A, 283-293, 295, 296, 304, 306, 308, 308A, 310.

The time for counsel to examine and analyze the documentary material is clearly inadequate. Discovery of material matters should not be left for the twilight of trial. Unfortunately, the

prosecution on information and belief received the bulk of the material in purported connection with the defendant Mullenax over the last several weeks. In fact, on September 22, 1975 we were advised that three new matters to be marked exhibits for identification, purportedly in connection with the prosecution against Mullenax, were just that day received by the prosecution. Counsel cannot be expected to prepare a proper defense, or to afford Mullenax effective assistance of counsel, under such conditions and circumstances.

Consequently, his counsel reluctantly must ask the Court to grant an adjournment in the trial date until at least October 6, 1975. Should the Court find that Mullenax stands alone in seeking an adjournment in the trial date, in view of the above coupled with defendant Mullenax's outstanding motions for Kastigar hearings among other relief, we would respectfully again renew Mullenax's motion for severance from his co-defendants.

A copy of this letter is being hand delivered simultaneously herewith to the United States Attorney for the Southern District of New York to the attention of Mr. MacDonald and Mr. Sussman.

Respectfully yours,

ROSENBERG, ROSENBERG & ROCKMAN

By_____
JOSEPH B. EHRLICH

JBE:lr

Rosenberg, Rosenberg & Rockman

Attorneys and Counselors at Law

A 144

HARRY ROSENBERG (1915-1973)
GEORGE ROCKMAN
MARC A. ROSENBERG
MICHAEL M. PERLMAN
HOWARD A. SCHUMINSKY
JOSEPH B. EHRLICH

Two Hundred Garden City Plaza
Garden City, New York 11530

516-248-4300

September 25, 1975

Hon. Milton Pollack
United States District Judge
United States Court House
Foley Square
New York, New York

HAND DELIVERY

Re: United States v. Mullenax
75 Cr 140 (MP)

Dear Judge Pollack:

With reference to the letter hand delivered to your Honor on September 24, 1975, please be advised that Government Exhibit 92 marked for identification was inadvertently omitted from the second paragraph of our letter as an exhibit never having been seen by us before September 19, 1975.

Respectfully yours,

ROSENBERG, ROSENBERG & ROCKMAN

By_____
JOSEPH B. EHRLICH

JBE:lr

cc: W. Cullen MacDonald, Esq.

A 145

U.S. DISTRICT COURT
FILED
SEP 29 1975
S.D. OF N.Y.

Endorsement

75 Crim 140 (mp)
Re Mullenan

This further attempt to derail the trial set for Sept 29, 1975 lacks equity and merit and is in all respects denied

So Ordered
9/26/75

Milton Pollack
USDJ

COPY RECEIVED
SEP 24 1975
PAUL J. CURRAN
U. S. ATTORNEY
SO. DIST. OF N.Y.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA :

:

-against- :

:

JOE TRUMAN BOYD, et al., :

Defendants. :

- x

NOTICE OF MOTION

75 Cr 140 (MP)

S I R:

PLEASE TAKE NOTICE that upon the indictment, the affidavit of JOSEPH B. EHRLICH, sworn to the 18th day of September, 1975, and upon all other papers and proceedings heretofore had herein, a motion will be made before Hon. MILTON POLLACK, United States District Judge, at the United States Court House, located at Foley Square, City and State of New York, at a time and place to be fixed by the Court for an order:

A

Pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure granting the defendant ERNEST R. MULLENAX inspection of the grand jury minutes with respect to the instant indictment, on the ground that the defendant MULLENAX possesses a particularized need to inspect the said grand jury minutes to establish that the instant prosecution against him may have been impermissibly based on the testimony the defendant gave as a bankrupt, during proceedings in which he was vested with use and derivative use immunity, under the provisions of Section 7a(10) of the Bankruptcy Act (Title 11 United States Code, Section 25(a)(10));

FFICES
. ROSENBERG
OCKMAN

B

Pursuant to the authority of Kastigar v. United States, 406 U.S. 441 (1972) for a hearing in which the prosecution must affirmatively establish that it did not use the testimony of defendant MULLENAX given during the course of bankruptcy proceedings or the fruits thereof, in any respect, and that the evidence it did use before the grand jury which found the instant indictment was derived from legitimate sources wholly independent of the compelled testimony of the defendant MULLENAX;

C

Pursuant to Rule 12(b) of the Federal Rules of Criminal Procedure dismissing the instant indictment against the defendant ERNEST R. MULLENAX, on the ground that the indictment was founded by the grand jury on evidence which was before the grand jury and used by the prosecution and grand jury, in contravention of the defendant MULLENAX's constitutional rights;

D

and for such other and further relief as to this Court may seem just and proper.

Yours, etc.,

ROSENBERG, ROSENBERG & ROCKMAN
Attorney for Defendant
ERNEST R. MULLENAX
Office and P. O. Address:
200 Garden City Plaza
Garden City, New York 11530
(516) 248-4300

TO: HON. PAUL J. CURRAN,
United States Attorney
Southern District of New York
One St. Andrew's Plaza
New York, N. Y.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA,

-against-

JOE TRUMAN BOYD, et al.,

Defendants.

AFFIDAVIT

- x

STATE OF NEW YORK)
) SS.:
COUNTY OF NASSAU)

JOSEPH B. EHRLICH, being duly sworn, deposes and says:

I am associated with the law firm of ROSENBERG, ROSENBERG & ROCKMAN, attorneys for the defendant, ERNEST R. MULLENAX, and make this affidavit in support of the relief requested in his notice of motion.

On or about December 1, 1970 the Hon. Robert B. Morton, Referee in Bankruptcy for the United States District Court for the District of Kansas, adjudged the defendant MULLENAX a bankrupt on a petition filed by him on November 27, 1970. The first meeting of his creditors was scheduled for January 5, 1971. On or about that date the defendant MULLENAX was examined as the bankrupt by his creditors. Mr. MULLENAX'S testimony unequivocally was vested with both use and derivative use immunity pursuant to Title 11 United States Code Section 25(a)(10).

During the course of the last week, I received and read a part of Mr. MULLENAX'S testimony given during the course of his examination by creditors at the first meeting of creditors in the bankruptcy proceeding. A copy of the transcript is to be

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AND ROCKMAN

nand delivered to the Court by your affiant for in camera inspection at a time simultaneous with the filing of this motion. An examination of the transcript reveals numerous instances in which the defendant testified as to matters which are the subject of the instant indictment against the defendant MULLENAX. It is noted that the Home State Bank, McPherson; State National Bank of Alabama, Decatur; and the Town & Country Business Trust all were present and took part in the aforesaid bankruptcy proceedings. During the course of discovery proceedings at the offices of the United States Attorney for the Southern District of New York, it was made apparent to me that the thrust of the prosecution's assertion is that Mr. MULLENAX obtained a $60,000.00 loan from the State National Bank of Alabama and a $25,000.00 loan from the Town & Country Business Trust, allegedly with the use of Select stock as collateral, purportedly knowing the stock to be worthless or less than represented in value. With respect to the Home State Bank, the prosecution's assertion is that Mr. MULLENAX pledged Select stock as additional collateral with reference to an outstanding loan.

It is significantly brought to the Court's attention that bank officials from both the Home State Bank of McPherson, Kansas, and the State National Bank of Alabama at Decatur, to wit: Richard Nichols and W. C. Collins, are clearly expected to be main government witnesses against the defendant MULLENAX These individuals among others who were aware of Mr. MULLENAX'S testimony in his bankruptcy proceedings, it is submitted, were main witnesses during the course of the Grand Jury proceedings resulting in the instant indictment against Mr. MULLENAX. A copy of Referee Morton's "Findings of Fact and Conclusions of Law on Objections of State National Bank of Alabama at Decatur and Home State Bank of McPherson, Kansas, to the Discharge of Bank-

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ROSENBERG, ROSENBERG
AND ROCKMAN

rupt, Ernest Richard Mullenax" is annexed hereto as Exhibit "A". This document was received by your affiant on or about August 14, 1975 from the United States Attorney's offices for the Southern District of New York.

On or about August 22, 1975, I received a written communication from the United States Attorney's offices with regard to the defendant MULLENAX'S bankruptcy proceedings. The letter is attached as Exhibit "B". The letter signed by Howard A. Sussman, Esq., one of the Assistant United States Attorneys involved in the instant prosecution states in pertinent part:

> "Neither material contained in Referee Morton's findings and conclusions [Exhibit A hereto], nor that in the notes mentioned above (notes of Mr. Mullenax's testimony in the bankruptcy proceedings), is in any instance new to us and we hereby represent that all the evidence to be used against Mr. Mullenax in the trial of this case comes from sources independent of those notes, findings and conclusions and is in no instance derived from them in any manner."

Again, an examination of the transcript of the first meeting of creditors reveals a multitude of instances in which the defendant testified as to matters which are the subject of the instant indictment against the defendant MULLENAX. The examination of the defendant-bankrupt by Clifford L. Mulone for the State National Bank of Alabama is particularly worth reading. The examination begins at page fifteen of the transcript. The inference has clearly been raised that the Grand Jury's charges against Mr. MULLENAX may have been impermissibly based on testimony the defendant gave under the immunity provisions of Title 11 United States Code Section 25(a)(10) which provides in pertinent part:

> "...no testimony or any evidence which is directly or indirectly derived from such testimony shall be offered in evidence against him in any criminal proceeding..."

A Grand Jury proceeding is a criminal proceeding within the meaning of Title 11 United States Code Section 25(a)(10). See United States v. Dornau, 356 F.Supp. 1091 (SDNY, 1973); United States v. Lawson, 255 F.Supp. 261. On information and belief, Mr. Sussman was not the Assistant United States Attorney involved in the presentation of this case to the Grand Jury, and the letter (Exhibit "B") is clearly insufficient to release the prosecution from its burden of proof. See United States v. Dornau, supra. In this regard the United States Court of Appeals for the Fifth Circuit stated in United States v. Seiffert, 463 F2d 1089, 1092 (1972):

> "The prosecutor, the F.B.I. agent who investigated the case, and the F.D.I.C. attorney all testified that they did not make direct or indirect use of Seiffert's (defendant-bankrupt) testimony. These conclusory statements are simply not enough to carry the burden.
>
> "...This burden of proof, which we reaffirm as appropriate, is not limited to a negation of taint; rather, it imposes on the prosecution the affirmative duty to prove that the evidence it proposes to use is derived from a legitimate source wholly independent of the compelled testimony." (Kastigar v. United States, 406 U.S. 441 (1972))."

Consequently, in the first instance as the Court stated in Dornau, supra at page 1100:

> "Inspection of the Grand Jury minutes is appropriate here to test the government's 'heavy burden.' Unless the defendant is aware of the evidence which the prosecutor has presented to the Grand Jury, he cannot effectively challenge the sufficiency of the claimed independent proof at any pre-trial hearing."

Secondly, as the Court stated in Dornau, supra, a preliminary hearing is required,

> "...in which the government must affirmatively show under Kastigar v. United States, 406 U.S. 441, 453, 460, 92 S.Ct. 1653, 32 L.Ed. 2d 212 (1972) that it did not use the compelled testimony or the fruits thereof 'in any respect,' and that the evidence it did use (before the Grand Jury) was derived from a legitimate source wholly independent of the compelled testimony."

LAW OFFICES
ROSENBERG, ROSENBERG
AND ROCKMAN

"[W]e are dealing here with a right of constitutional dimensions and not of competency or adequacy of testimony before a Grand Jury."

Lastly, if it found that any of the evidence before the Grand Jury was tainted, the indictment must be dismissed by the Court against the defendant MULLENAX.

S/
JOSEPH B. EHRLICH

Sworn to before me this
18th day of September, 1975.

S/
Notary Public

BARBARA D. HALLETT
NOTARY PUBLIC, State of New York
No. 30-1291250
Qualified in Nassau County
Commission Expires March 30, 19 75

A 15

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

FILED

JUN 29 1973

ARTHUR G. JOHNSON, Clerk

By Sharon K. May Deputy

IN THE MATTER OF	)	
	)	
ERNEST RICHARD MULLENAX,	)	In Bankruptcy
	)	
	)	No. 19,798-B-2
	)	
Bankrupt	)	

U.S. DISTRICT COURT)
DISTRICT OF KANSAS) ss

I hereby certify that the foregoing is a true copy of the original on file in this court and cause.

ARTHUR G. JOHNSON, Clerk

By D. Ladeorg Deputy

Dated: 7/5/73

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON OBJECTIONS OF STATE NATIONAL BANK OF ALABAMA AT DECATUR AND HOME STATE BANK OF McPHERSON, KANSAS, TO THE DISCHARGE OF BANKRUPT, ERNEST RICHARD MULLENAX

APPEARANCES

At the hearing on the specifications of objections to discharge of Ernest Richard Mullenax filed by the State National Bank of Alabama at Decatur and by the Home State Bank of McPherson, Kansas, all specifications having been consolidated for hearing and trial, the State National Bank of Alabama at Decatur (Decatur Bank) appeared by Clifford L. Malone, Esq., the Home State Bank of McPherson, Kansas (Home State Bank) appeared by William Porter, Esq., the bankrupt, Ernest Richard Mullenax appeared by Robert T. Cornwell, Esq., and the trustee, David G. Arst, Esq., appeared pro se.

STATEMENT OF THE CASE

Both objectors invoke Section 14c.(2)--failure to keep adequate accounts and records of financial conditions and business transactions; Section 14c.(3)--obtainment of money or credits for business purposes by false financial statement; and Section 14c.(7)--failure to satisfactorily explain losses of assets and deficiency of assets to meet liabilities. The matter was tried on the merits

Exhibit A

after which suggested findings of fact and conclusions of law were submitted by both objectors; and the court having now considered the matter under advisement makes and enters the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The bankrupt, Ernest Richard Mullenax (there are no objections to the discharge of co-bankrupt, Margaret Louise Mullenax) sought a loan from the Decatur Bank in connection with taking over as president of an insurance company in Alabama.[1/] The bankrupt represented that he was going to use the loan proceeds to put into this corporation.[2/] In connection with securing this loan the bankrupt gave to the creditor a written financial statement.[3/]

2. On May 8, 1970, said creditor loaned to the bankrupt the sum of $60,000, taking a promissory note and an assignment of 20,000 shares of stock in a company named Select Enterprises, Inc.[4/] The stock of Select Enterprises was registered in the names of Mr. Boyd and Mr. Joiner, but was coupled with stock powers executed by such parties with the signatures guaranteed by a bank.[5/] In connection with offering the Select Enterprises stock as collateral for the loan, the bankrupt submitted to the creditor a written financial statement on Select Enterprises, Inc., reflecting the condition of the company as of March 5, 1970.[6/] Both of these financial statements were relied upon by the creditor in making the loan to the bankrupt.[7/]

3. Shortly after making the original loan the creditor loaned the bankrupt an additional $5,000 with no additional security being taken, but such loan was made, again, upon reliance on the

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1/ Tr. 8/1/72, P. 28
2/ Ibid. P. 31
3/ Decatur Bank Exhibit C, dated 4/30/70
4/ Exhibits G and H, Tr. 8/1/72, P. 40
5/ Tr. 8/1/72, P. 33
6/ Decatur Bank Exhibit D
7/ Tr. 8/1/72, P. 32

financial statements made by the bankrupt.[8]

4. In the financial statement dated April 30, 1970, the bankrupt lists personal assets of a total value of $285,500. In addition, he lists $491,984 worth of stocks. By far the largest portion of the stocks which the bankrupt listed consist of stock in three different companies, namely, Diversified Products Corporation, Golden Era Investment Corporation, and Diversified Enterprises of America. Each of these three companies was organized and promoted by the bankrupt, and in each instance the bankrupt acquired such stock without paying anything for it whatsoever.[9] The trustee, who requested all of the bankrupt's books and records, was unable to find out anything about these corporations.[10] There was very little, if any, capital ever put into or acquired by any of these three companies, nor does it appear that any of such companies ever actually became operational so that they had any real or intrinsic value. All of such companies were defunct at the time of the filing of the bankruptcy, and the bankrupt did not bother to list any such stocks as assets in his schedules. The values attributable to such stocks in the financial statement,[11] dated April 30, 1970, were grossly inflated and, in fact, were false, inasmuch as such stocks were completely worthless.

5. In addition to the stocks listed as assets in said financial statement, the bankrupt listed $14,000 as due from business associates and friends, and $135,000 due from corporations for services. The bankrupt failed to produce any documentary evidence whatsoever substantiating any of this indebtedness. In this connection none of such indebtedness was documented by promissory notes, written contracts, or books and records. In fact, while he claimed these assets in his financial statement dated April 30, 1970,

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8/ Ibid. P. 49, 50
9/ Tr. 1/5/71 P.7& 9, Tr. 6/8/72, P. 56, 58, 61, 62
10/Tr. 8/1/72, P. 53
11/Decatur Bank Exhibit C

in November of 1970, when he filed his schedules in bankruptcy, he listed only three debts, one from an individual for $4,650, another from an estate for $1,500, and another for sales commissions from a company in the sum of $2,000.[12/] The claimed indebtedness owed to the bankrupt set forth in the financial statement of April 30, 1970, is clearly false and misleading.

6. In connection with securing the loan of $60,000 and the subsequent loan of $5,000 from the Decatur Bank, the bankrupt submitted to it a financial statement of a company named Select Enterprises, Inc., a Nevada Corporation, which apparently was controlled by two individuals by the names of Mr. Boyd and Mr. Joiner, from whom the bankrupt secured the 20,000 shares of such stock to be used as collateral. Select's financial statement reflected two assets, namely, land of a value of $25,404,500 and minerals of a value of $23,561,257. Of the number of shares outstanding, the statement reflected a book value of approximately $21 per share.

7. A proceeding was commenced in the United States District Court for the Southern District of New York by the Securities and Exchange Commission against Select Enterprises, Inc., Mr. Boyd and Mr. Joiner, and others, to enjoin the violation of the Securities Act for selling the unregistered stock of Select Enterprises, Inc. In this proceeding the United States District Court made findings of fact to the effect that a man by the name of Boyd acquired stock in a Nevada corporation, changed its name, and then proceeded to New York, where, with the services of other parties, he proceeded to create a false market in the Select Enterprises stock. In this connection, the court found that the values placed in the Select

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12/ Tr. 8/1/72, P. 55

Enterprises balance sheet dated March 5, 1970, on both the mining properties and the land, were false, inflated and misleading.[13]

8. The Decatur Bank attempted several times to dispose of this stock, without success. It appears that Select Enterprises is defunct and was activated for the purpose of defrauding creditors.

9. The bankrupt claimed to have no knowledge about the accuracy or inaccuracy of the Select Enterprises financial statement. This claim of the bankrupt is inconsistent with his testimony as concerning the manner in which he acquired the stock. At the first meeting of creditors the bankrupt testified that he acquired his stock in Select Enterprises through indebtedness of the principals in that company, namely Mr. Boyd and Mr. Joiner.[14] The bankrupt claimed this indebtedness arose by virtue of his having traveled in the capacity of public relations representative.[15] In attempting to explain, the bankrupt related contact with a man in New Orleans, whose name he could not remember, and with another unidentified individual in Houston, and a conversation with them which in some undescribed way referred to Mr. Boyd and Mr. Joiner.[16]

10. At the second meeting of creditors the bankrupt testified that he acquired a total of 60,000 shares of Select Enterprises stock as the result of trading a franchise for a charm school belonging to Golden Era.[17] While he claimed a contract with Select Enterprises, he was unable to produce it. However, he received 60,000 shares, which he represented to be worth $12 a share, or a total of $720,000 worth of Select stock.[18] There was no showing that Select Enterprises ever did anything in connection with the charm school, nor what the bankrupt did, if anything, for Select

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13/ Decatur Bank Exhibit F
14/ Tr. 1/5/71, P. 16
15/ Ibid. P. 17
16/ Ibid. P. 19,20
17/ Tr. 6/8/72, P. 65,66
18/ Ibid. P. 71

Enterprises. While the bankrupt testified about transferring the charm schools in the second meeting of creditors, he contradicted his testimony at the first meeting of creditors, in which he stated that the charm school arrangement between Golden Era Investment and Select Enterprises was never consummated[19] and any assets of Golden Era still belong to it, although the company is defunct.[20]

11. It appears that Select Enterprises, Inc., is and has been a shell corporation in whose stock Mr. Boyd and Mr. Joiner created a false market for the purpose of supporting its sale or use as collateral for loans. The bankrupt has failed to satisfactorily explain how he acquired the stock in this company, which stock he had stated was worth $720,000. That bankrupt was involved with Mr. Joiner may be inferred from his testimony about the proceeds from a $25,000 loan he received from Mr. Paul Mann of the Town and Country Business Trust in Wichita. This loan was secured by pledging 40,000 shares of Pig and Whistle and 2,000 shares of Select Enterprises.[21] The Pig and Whistle shares were likewise secured from Mr. Joiner, the consideration being the same as that for Select Enterprises.[22] Of the $25,000 loan, Mr. Joiner received $4,000, according to the testimony of the bankrupt.[23] While this supposedly was a loan, it was not listed as an asset in his bankruptcy schedules.

12. The falsity of the financial statement dated April 30, 1970, is further demonstrated by a financial statement of the bankrupt dated May 1, 1970, one day later.[24] While on the April 30 statement he shows a net worth of $557,000, one day later his statement shows a net worth of $1,306,000. On April 30 he lists

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19/ Tr. 1/5/71 P. 48
20/ Ibid. P. 45
21/ Ibid. P. 56
22/ Ibid. P. 57
23/ Ibid. P. 55
24/ Decatur Bank Exhibit E

cash on hand in the sum of $1,500, whereas on May 1 he lists cash on hand of $15,000. On April 30, 1970, he lists due from business associates and friends $14,000, whereas on May 1 he lists due from business associates and friends $24,000. In the statement dated May 1, 1970, he includes ownership of stock in Joint Talent Group, Inc., in the sum of $50,000, and stock in Continental General Corporation in the sum of $285,000. Joint Talent and Continental General Corporation were local companies in Decatur and the Decatur banks well knew that those companies were virtually insolvent. Bankrupt omitted those stocks from his financial statement given to the Decatur bank. On the other hand, he included them in his financial statement dated May 1, 1970, which he gave to Town and Country Business Trust in Wichita to secure a loan in the sum of $25,000. 25/

13. The only books and records the bankrupt has produced for the trustee concerning his holdings and business operations have been a few cancelled checks from some of his personal bank accounts. He has failed to keep or preserve books of account or records from which can be ascertained his financial condition and business transactions as they involved the several corporations mentioned.

14. The bankrupt has been wholly unable to explain loss of assets between April 30, 1970 and the time of the filing of his voluntary petition on November 27, 1970. The stock ownerships and values attributable thereto set forth in the bankrupt's financial statements are grossly disparate with those set out in his bankruptcy schedules.

25/ Tr. 1/5/71, P. 58

15. On or about May 8, 1968, the bankrupt prepared his personal financial statement[26] and delivered it to officials of Home State Bank for the purpose of obtaining a loan.

16. He did obtain a loan of $22,000[27] which was for business purposes, having to do with an oil and gas venture.[28]

17. The major asset listed on the financial statement was 80,000 shares of Diversified Products Corporation valued at $3.00 a share, which stock purportedly constituted an asset of $240,000.

18. In fact, there had never been any market at all for such stock.[29] At one time the bankrupt testified that he received the stock for promotional efforts;[30] at another time he testified that he had traded a battery additive franchise for it.[31] He testified that he had not paid anything for the battery additive franchise and had never made any money out of it.[32]

19. There were eight or nine other incorporators of Diversified Products Corporation who paid in about $140,000 for their stock.[33] The total assets of Diversified Products Corporation consisted of this $140,000 and the battery additive franchise.[34] The valuation by the bankrupt of his own shares of Diversified Products Corporation at $240,000 was materially false.

20. Also, it appears that "our summer home in Tilden, Illinois" appearing on the financial statement and valued at $17,000 was not owned by the bankrupt.[35]

21. Having in mind the issues raised here by Home State Bank of McPherson, the similar issues presented by State National Bank of Alabama, and the financial statement dated May 1, 1970

26/ Ibid. P. 3; Home State Bank Exhibit 1
27/ Tr. 8/1/72 P. 78
28/ Ibid. 84, 89
29/ Tr. 1/5/71, P. 9, 10
30/ Ibid. P. 7
31/ Tr. 8/1/72, P. 87, 88
32/ Ibid. P. 88
33/ Ibid.
34/ Ibid.

(showing the bankrupt's net worth to be $1,306,386)[36], the Court finds that the bankrupt was engaged in a scheme or pattern to borrow sums of money from lenders by exhibiting materially false financial statements.

22. The Court further finds that the bankrupt has failed to explain satisfactorily the losses of his assets, or his present deficiency of assets to meet his liabilities.

23. During the course of the first meeting of creditors, the bankrupt was ordered to turn over all of his books and records to his attorney, for transmittal to the trustee.[37] The bankrupt testified on June 8, 1972, that he had turned over all of his books and records to the trustee.[38]

24. On August 1, 1972, the trustee testified as to what had been turned over to him.[39] These were some cancelled checks on various accounts, some memoranda written by the bankrupt to himself and to other people, some letters and a deed. There was no record of the bankrupt's associations with or holdings in the various corporations whose names appear on the various financial statements which are in evidence; there were no ledgers, records of account receivable or notes receivable or other records.[40]

25. The bankrupt testified that during the one and one-half year period up to the spring of 1970, he had earned $100,000 in commissions as salesman for Automotive Performance, Inc., but had turned all of such earnings over to another company and had kept no records whatever pertaining to this $100,000.[41]

36/ Decatur Bank's Exhibit E; Home State Bank's Exhibit 5
37/ Tr. 1/5/71, P. 63
38/ Tr. 6/8/72, P. 28
39/ Tr. 8/1/72, P. 51
40/ Ibid.
41/ Tr. 6/8/72, P. 41

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CONCLUSIONS OF LAW

A. The Court finds that the bankrupt has failed to keep or preserve books of account from which his financial condition and business transactions might be ascertained, for which reason his discharge in bankruptcy should be denied pursuant to Section 14c.(2) of the Bankruptcy Act.

B. The Court further finds that the bankrupt, while engaged in business as an executive of a corporation, obtained for such business money on credit by making or publishing a materially false statement in writing respecting his financial condition, for which reason his discharge should be denied pursuant to Section 14c.(3) of the Bankruptcy Act.

C. The Court further finds that the bankrupt has wholly failed to explain satisfactorily losses of assets to meet his liabilities, for which reason his discharge should be denied pursuant to Section 14c.(7) of the Bankruptcy Act.

Dated and entered at Wichita, Kansas this 19th day of June, 1973.

(SIGNED) ROBERT B. MORTON

Referee

United States Department of Justice

ADDRESS REPLY TO "UNITED STATES ATTORNEY" AND REFER TO INITIALS AND NUMBER

HSS:ma

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK, N. Y. 10007

A 163

August 19, 1975

Joseph Ehrlich, Esq.
Rosenberg, Rosenberg & Rockman
200 Garden City Plaza
Garden City, NY 11530

Re: United States v. Ernest R. Mallewax
75 Cr. 140 (MP)

Dear Mr. Ehrlich:

This will confirm information given to you last Thursday, August 14.

We have examined certain documents relating to Mr. Mullewax's bankruptcy. These include notes of Mr. Mullewax's testimony and Referee Morton's findings and conclusions dated and filed June 29, 1973, in the United States District Court for the District of Kansas, but not the transcript of Mr. Mullewax's testimony referred to therein or any other testimony he may have given in his bankruptcy.

Neither material contained in Referee Morton's findings and conclusions, nor that in the notes mentioned above, is in any instance new to us, and we hereby represent that all the evidence to be used against Mr. Mullewax in the trial of this case comes from sources independent of those notes, findings and conclusions and is in no instance derived from them in any manner. If you wish to make a more formal record concerning this matter, we would suggest that you do

Exhibit B

ma A 164

so by motion in advance of the date set for trial of this matter.

Very truly yours,

PAUL J. CURRAN
United States Attorney

By: Howard S. Sussman
HOWARD S. SUSSMAN
Assistant United States Attorney
(212) 791-1921

LAW OFF
BERG, R
ND ROC

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

JOE TRUMAN BOYD, et al.,

Defendants.

NOTICE OF MOTION

75 Cr 140 (MP)

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S I R :

PLEASE TAKE NOTICE that upon the indictment, the affidavit of JOSEPH B. EHRLICH, sworn to the 24th day of September, 1975, and upon all other papers and proceedings heretofore had herein, a motion will be made before Hon. Milton Pollack, United States District Judge, at the United States Court House, Foley Square, New York, New York, at a time and place to be fixed by the Court for an order pursuant to the authority of Kastigar v. United States, 92 S.Ct. 1653 (1972) for a hearing in which the prosecution must prove that all of the testimony and evidence it proposes to use at trial against the defendant ERNEST R. MULLENAX was derived from legitimate independent sources and that the testimony of the defendant ERNEST R. MULLENAX given as a bankrupt, which testimony was vested with the immunity provided by Title 11 United States Code Section 25(a)(10), will not be used in any respect, directly or

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KMAN

indirectly, in the instant and above referenced prosecution against him, and for such other and further relief as to this Court may seem just and proper.

Yours, etc.

ROSENBERG, ROSENBERG & ROCKMAN
Attorneys for Defendant,
ERNEST R. MULLENAX
Office and Post Office Address
200 Garden City Plaza
Garden City, New York 11530
(516)248-4300

TO: HON. PAUL J. CURRAN
United States Attorney
Southern District of New York
One St. Andrew's Plaza
New York, New York

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CKMAN

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BERG,
ND RO

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA,

-against-

AFFIDAVIT

JOE TRUMAN BOYD, et al.,

Defendants.

----------x

STATE OF NEW YORK)
) SS.:
COUNTY OF NASSAU)

JOSEPH B. EHRLICH, being duly sworn, deposes and says:

This motion is made to supplement the relief requested in defendant MULLENAX'S Notice of Motion filed with the Court on or about September 19, 1975. The latter Notice of Motion seeks inspection of the Grand Jury minutes, a hearing pursuant to Kastigar v. United States, 92 S.Ct. 1653 (1952) in which the prosecution must prove that the testimony and evidence before the Grand Jury finding the instant indictment was not tainted in contravention of the defendant's constitutional rights with respect to the immunity he was vested with under Title 11 United States Code Section 25(a)(10), and for dismissal of the indictment if the prosecution fails to meet its burden of proof at the hearing and/or the testimony or evidence is found tainted.

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This affidavit is made in support of the defendant MULLENAX'S application that,if necessary, the prosecution, also has the affirmative duty to prove that the evidence it proposes to use at trial is derived from legitimate sources wholly independent of the compelled testimony given by the defendant at his bankruptcy proceedings. See Kastigar, supra at page 1665; United States v. Seiffert, 463 F.2d 1089 (1972) as discussed in affidavit in support of Notice of Motion filed on or about September 19, 1975. The High Court stated that a defendant,

> "...need only show that he testified under a grant of immunity in order to shift to the Government the heavy burden of proving that all of the evidence it proposes to use was derived from legitimate independent sources (footnote omitted; underscoring added; 92 S.Ct. at 1665)."

The High Court made it crystal clear that a hearing must be afforded where the prosecution must meet its burden of proof. Anything less would be in contravention of defendant's Fifth Amendment rights.

JOSEPH B. EHRLICH

Sworn to before me this
24th day of September, 1975.

Notary Public

MICHAEL M. PERLMAN
Notary Public, State of New York
No. 30-3063506
Qualified in Nassau County
Commission Expires March 30, 1977

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ROSENBERG
CKMAN

HSS:lq
n-880

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA, :

- v - : AFFIDAVIT

JOE TRUMAN BOYD, et al., : 75 Cr. 140 (MP)

Defendants. :

- - - - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

W. CULLEN MacDONALD, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York and as such am in charge of the prosecution of this case. I make this affidavit in response to the motion of defendant Ernest R. Mullenax ("Mullenax"), served on us September 19, 1975. I am the Assistant United States Attorney who presented this case to the Grand Jury.

2. Mullenax's motion seeks discovery of the grand jury minutes in this case, the holding of a hearing under Kastigar v. United States, 406 U.S. 441 (1972), and the dismissal of the indictment on the asserted ground that the prosecution is tainted by testimony Mullenax gave in January 1971 in his bankruptcy. The motion is factually unsound and should be denied without a hearing.

3. The motion focuses on Mullenax's activity with respect to three banks, and their officers who may be witnesses at trial: State National Bank of Alabama and

HSS:lq
n-880

W. R. Collins; Home State Bank, MacPherson, Kansas, and R. D. Nichols; Town and Country Business Trust, Wichita, Kansas, and Paul Mann. Our awareness of these banks and officers and their involvement with Mullenax is in no way derived from Mullenax's bankruptcy testimony, of which we are possessed but which we have never read.

4. The identity of Collins' and Nichols' banks was established during the SEC investigation of Select long prior to Mullenax's January 1971 bankruptcy testimony. This is conclusively shown by the banks' having been named in Exhibit 5 to an affidavit of Meyer Goldman of the SEC, sworn to August 21, 1970 and filed September 11, 1970, in connection with the SEC injunction action against Select in this Court, 70 Civ. 3795. Excerpts from that affidavit are annexed hereto as Exhibit 1.

5. The identity of Mann and his Trust appears to have come to the attention of the SEC either through a letter in 1972 from Franklin D. Gaines, an attorney for the Trust, a copy of which is annexed hereto as Exhibit 2, or as a result of a conversation between Leo Bokal of the SEC and Nichols in November 1974.

6. Contrary to Mullenax's theorizing, neither Collins, Nichols nor Mann was a witness in the Grand Jury so that there is no basis for ordering examination of the minutes of that body.

WHEREFORE, I respectfully request that Mullenax's motion be in all respects denied.

W. CULLEN MacDONALD
Assistant United States Attorney

Sworn to before me this
24th day of September, 1975.

GLORIA CALABRESE
Notary Public, State of New York
No. 24-0535340
Qualified in Kings County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A 171

SECURITIES AND EXCHANGE COMMISSION :

Plaintiff, :

-against- :

SELECT ENTERPRISES, INC. :
JOE T. BOYD
JIM JOINER :
M. S. KNISLLY
E.D. GOODLOE :
EMERSON TITLOW
ALAN I. SEGAL :
KAREN CO.
JOSEPH AZZARONE :
ECONOMIC PLANNING CORP.
MICHAEL KARFUNKEL :
HOWARD BROOKSHIRE
ACE ASSOCIATES, INC. :
WILLIAM H. DAVIDSON
GLEN DIAL :
HOYT W. L. BRINLEE
VIRGIL L. BARKER :
WILLIAM C. CHAPEL
CROWN TRADING CO. :
JOHN WELLS
WILLIAM WAYNE BARNETT :

Defendants :

AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MEYER GOLDMAN, being duly sworn, deposes and says:

1. I am employed by the Securities and Exchange Commission ("Commission") as a securities investigator in the New York Regional Office, New York, New York. I submit this affidavit in support of the Commission's motion for a preliminary injunction against defendants Select Enterprises, Inc. ("Select"), Joe T. Boyd, ("Boyd"), Jim Joiner ("Joiner"), M. S. Knisely ("Knisely"), E. D. Goodloe ("Goodloe"), Alan I. Segal ("Segal"), Karen Co. ("Karen"), Joseph Azzarone ("Azzarone"), Economic Planning Corp. ("Economic"), Michael Karfunkel ("Karfunkel") and Emerson Titlow ("Titlow"), to enjoin them from further violations of Sections 5(a), 5(c) and 17(a)

Exhibit 1

A 172

43. In promoting the distribution of unregistered stock defendants dissminated false and misleading information concerning Select to the investing public and further faciliated this by artificially creating and maintaining a market in Select at prices unrelated to the genuine market value or intrinsic worth of the stock.

44. Defendants, Select, its officers and directors and Boyd and his associates still retain control of the corporate mechanism whereby new shares are issued and are also believed to retain a substantial number of shares already issued and outstanding.

45. As recently as May 8, 1970 10,000 shares were pledged as collateral for a loan from the State National Bank in Decater, Alabama to Ernest Mullenax for $60,000. The stock pledged originally was in the name of Joe T. Boyd.

46. In all of the above activities with respect to the distribution and sales of the stock of defendant Select and in respect of the dissemination and communication of false and misleading information concerning defendant Select, the defendants made use of the mails and of the means and instrumentalities of transportation and communication in interstate commerce. In addition, the United States mails were used to transport Select stock and to transport confirmation slips and checks after sale.

47. No previous application for the relief sought herein has been made to this or any other court.

Meyer Goldman
MEYER GOLDMAN

Sworn to before me this
21st day of August,
1970.

Gerald Gordon
NOTARY PUBLIC

GERALD GORDON
NOTARY PUBLIC, State of New York
No. 60-1511160
Qualified in Westchester County
Commission Expires March 30, 1971

EXHIBIT 5

A 173

(A) Denotes Select shares Boyd received when he purchased Goldfield.

(B) Denotes original issue Select stock.

Issuer	No. of Shares		Issued or Offered to	Consideration
Boyd	100,000	(A)	Alan T. Segal	Segal created a public market for Select stock
Select	30,000	(B)	Economic Management Services ("EMS")	the company
Boyd	10,000	(A)	William C. Chapel	past services to Boyd
Boyd	10,000	(A)	Jim Joiner	past services to Boyd
Select	66,667	(B)	Ed Goodloe	Comanche County Gas Properties
Brookshire	10,000	(A)	Fort Worth National Bank	collateral for $74,000 loan which is now in default
Select	66,667	(B)	E. H. Grube	Land in Midland, Texas
Select	47,000	(B)	R. C. Maxson	Patio Building, Midland, Texas

Issuer	No. of shares		Issued or Offered to	Consideration
Select	333,233	(B)	Vincent Investment Co.	Land in California
Select	416,667	(B) 1/	Desert Investment Co.	Land in California
Boyd	20,000	(A)	Tony Garza	for finding and placing loans using Select stock
Boyd	10,000	(A)	Fred Bannowsky	past services to Boyd
Boyd	10,000	(A)	SS Weber	past services to Boyd
Boyd	60,000	(A)	Bruce Baker	past services to Boyd
Boyd	50,000	(A)	Jack Geddes	past services to Boyd
Ed Goodloe	20,000	(B)	Blanton Grain Carrolton, Texas	collateral put by Hoyt Brinlee for Grain Elevator
Bill Ballard	20,000	(A)	Citizens National Bank	offered for 15,000 acre Ranch in Oklahoma
Tom Shore	$2 million worth	(A)	Citizens National Bank	offered for 15,000 acre Ranch in Oklahoma

1/ Ace Associates was to get 4/7 of the stock issued for the California land.

EXHIBIT 5

Issuer	No. of Shares		Issued or Offered to	Consideration
Jack Kennemer	$ 9 500	(A)	Moody Machinery & Equipment Co.	offered to purchase Rock Crushing Equipment
Boyd	21,000	(A)	Fritch State Bank	pledged by Barry Carver to show good faith for $10,000 check Carver bounced at the bank
J.J. Joiner	10,000	(A)	Home State Bank, McPherson Kans.	pledged by Ernest Mullenax for further collateral on overdue loan
Boyd	10,000	(A)	American Founders Insuarance	used by Myron Bickel to "protect against a debit balance" he had with the company
Boyd	22,000	(A)	Richard McDaniel and Bob Boyles of Dallas	attempt by Garza to sell stock on an option basis
Segal (A)	10,000	(A)	Trade Bank & Trust	used as collateral by Harold Vernon and Chester Dorres

EXHIBIT 5

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Issuer	No. of Shares	Issued or Offered to	Consideration
Segal (A)	1,000 (A)	Mike Karfunkel	used by Segal to collateralize $8,000 loan
Segal	2,000 (A)	Alan Grant	for collateral on debt
Segal	8,000 (A)	Central State Bank	loan by Stuart Schiffman for $40,000
Joiner	10,000 (A)	State National Bank	loan by Ernest Mullenax for $60,000

EXHIBIT 5

ants, their ag...

A 177

April 25, 1972

Securities Exchange Commission
Washington, D.C.

Gentlemen:

By way of introduction, I am an attorney for the Town and Country Business Trust, an entity organized under the laws of the State of Kansas. My client is the owner of 20,000 shares of Pig and Whistle Holding Corporation, a corporation organized under the laws of the State of Nevada, and 20,000 shares of Select Enterprises, Inc., a corporation organized under the laws of the State of Nevada. We received this ownership in and to these securities by virtue of a foreclosure action.

According to our information, both of the above attorneys have been under investigation by the S.E.C. and we would like to have any information that you might give us relating to said corporation. We would like to sell our security in order to clear up our collateral loans, but can not do so until such time as we determine the legal status of said corporations.

Thanks very much for any information you might be able to provide us.

Yours truly,

Franklin D. Gaines

FDG/jd

Exhibit 2

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA,

-against-

JOE TRUMAN BOYD, et al.,

Defendants.

----------x

REPLY AFFIDAVIT

75 Cr 140 (MP)

STATE OF NEW YORK)
) SS.:
COUNTY OF NASSAU)

JOSEPH B. EHRLICH, being duly sworn, deposes and says:

The affidavit of W. Cullen Mac Donald, in purported opposition to MULLENAX'S Notice of Motion for inspection of the Grand Jury minutes and a hearing in accord with the mandate of Kastigar v. United States, 406 U.S. 441 (1972) is both specious and frivilous.

The prosecution engages in legerdemain in an attempt to escape "its heavy burden of proving" that all of the evidence employed before the Grand Jury was from wholly legitimate and independent sources. It is pure wishful thinking for the prosecution to represent that "neither Collins, Nichols nor Mann was a witness in the Grand Jury" and consequently the Government is relieved of its burden of proof so that examination of the Grand Jury minutes by the defendant is without basis.

Significantly, Mr. Mac Donald "the Assistant United States Attorney who presented this case to the Grand Jury" doesn't deem it necessary to make a similar representation with respect to the Grand Jury as Mr. Sussman made to counsel for MULLENAX in his letter dated August 19, 1975 and attached as

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Exhibit "B" to MULLENAX'S Notice of Motion. Even if Mr. Mac Donald did proffer the representation that all the evidence used against MULLENAX in the presentation of the case to the Grand Jury finding the instant indictment came from legitimate independent sources, under Kastigar, this clearly would not be sufficient. The High Court stated in Kastigar, supra, that a defendant,

> "...need only show that he testified under a grant of immunity in order to shift to the government the heavy burden of proving that all of the evidence it proposes to use was derived from legitimate sources (footnote omitted; 406 U.S. at 461, 462)."

The Court in United States v. Seiffert, 463 F2d 1089, 1092 (CA5, 1972) made clear the government's burden as defined in Kastigar. It said:

> "The prosecutor, the F.B.I. agent who investigated the case, and the F.D.I.C. attorney all testified that they did not make direct or indirect use of Seiffert's (defendant-bankrupt) testimony. These conclusory statements are simply not enough to carry the burden."
>
> "'This burden of proof, which we reaffirm as appropriate, is not limited to a negation of taint; rather, it imposes on the prosecution the affirmative duty to prove that the evidence it proposes to use is derived from a legitimate source wholly independent of the compelled testimony.' (quoting Kastigar v. United States, 406 U.S. at 460)."

Moreover, Mr. Mac Donald's main contention is that the prosecution's "awareness of these banks and officers and their involvement with MULLENAX is in no way derived from MULLENAX'S bankruptcy testimony, of which we are possessed but which we have never read." This is not the issue presented in MULLENAX'S papers or the concern of the Court in Kastigar. The unequivocal fact is that the bank and "Mann and his Trust" fully participated in the proceedings where MULLENAX'S testimony was vested with use and derivative use immunity under Title 11 United States Code Section 25(a)(10). In these proceedings, which the Court possess a photocopy of the transcript,

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Mr. MULLENAX testified as to matters far beyond "awareness" of the banks and officers, which testimony directlybears on the subject of the instant indictment against MULLENAX.

The fact also exists that the purported pledge of Select stock by MULLENAX to the State National Bank of Alabama and the Town and Country Business Trust to allegedly obtain loans and the purported utilization of Select stock by MULLENAX as additional collateral for an outstanding loan at the Home State Bank is central to the prosecution's case against MULLENAX. Resultantly, it is inconceivable that no one from the aforesaid entities, all participants and fully familiar with MULLENAX'S bankruptcy proceedings, did not testify at the Grand Jury proceedings. Otherwise, a strong inference exists against a sufficient basis or evidence for the finding of the instant indictment against MULLENAX.

Moreover, other Grand Jury witnesses could have known or been familiar with MULLENAX'S bankruptcy testimony. In any event, the law is clear, as stated in United States v. Dornau, 356 F. Supp. 1091 (SDNY, 1973) that a hearing is required,

> "...in which the government must affirmatively show under Kastigar v. United States, 406 U.S. 441...that it did not use the compelled testimony or the fruits thereof 'in any respect, and that the evidence it did use (before the Grand Jury) was derived from a legitimate source wholly independent of the compelled testimony (emphasis supplied)."

Also in this respect see Kastigar, supra 406 US at 453, 454, 459-462.

Finally, again as stated in Dornau, supra at page 1100:

> "Inspection of the Grand Jury minutes is appropriate here to test the government's 'heavy burden.' Unless the defendant is aware of the evidence which the prosecutor has presented to the Grand Jury, he cannot effectively challenge the sufficiency of the claimed independent proof at any pre-trial hearing."

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AND ROCKMAN

The relief requested in defendant MULLENAX'S Notice of Motion should in all respects be granted, it being in full accord with the mandate of the High Court in Kastigar and other noted judicial authority.

S/
JOSEPH B. EHRLICH

Sworn to before me this
25th day of September, 1975.

S/
Notary Public

BARBARA D. HALLETT
NOTARY PUBLIC, State of New York
No. 30-1281250
Qualified in Nassau County
Commission Expires March 30, 1977

JBjw

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

v. 75 Cr. 140 -

JOE TRUMAN BOYD, et al, :

Defendants.

----------x

B E F O R E :

HON. MILTON POLLACK,

District Judge.

A P P E A R A N C E S :

For the Government:

W. CULLEN MAC DONALD, ESQ.,
Assistant United States Attorney

For Deferdant Mullenax:

JOSEPH B. EHRLICH, ESQ.,

THE COURT: First of all, so far as the subpoena is concerned, I have segregated the papers so as to deal with the problem of the subpoena and it is so near to the date of the trial that, as a practical matter, why don't I say that the subpoena is quashed and say that to the extent that there are any unprivileged documents in the possession of Mr. Ehrlich or his client, that they be produced at the opening day of the trial for such treatment as they may deserve or be entitled to as unprivileged documents that might be called upon for the trial.

That will satisfy that problem, won't it?

MR. EHRLICH: Yes. First let me say good afternoon, your Honor.

THE COURT: Have you gotten back the papers we segregated out?

MR. EHRLICH: Yes, I have.

THE COURT: Do you want me to hold them and bring them to the courtroom on Monday?

MR. EHRLICH: I think that would be best, your Honor.

THE COURT: That takes care of that problem.

I thought I had with me the motion on the subpoena but I don't see it.

MR. EHRLICH: Your Honor, I have a photocopy if it would be of assistance to your Honor.

THE COURT: No, I don't have the originals here and I must sign them.

The next motion is a motion under Rule 6(e) for an inspection of the grand jury minutes. I may say that having read these papers, I see no particular genuine need shown for the relief that has been requested.

What particularized need do you claim you have shown other than your spequlations and conjectures as to what was contained in the grand jury minutes or how they happened to get there?

MR. EHRLICH: Yes, your Honor, I will address myself to that issue by --

THE COURT: I am not talking about the Kastigar issue. We will take that separately.

MR. EHRLICH: I believe that I first have to address myself to Kastigar to get to the grand jury.

THE COURT: So far as Kastigar is concerned, that is a motion made on the eve of trial date was set and long after the time of the arraignment and the motion is untimely. There is a failure to show a particularized need for the grand jury minutes and incorrect findings are asserted as to those who testified, indicating lack of

probity of the supporting papers and there is certainly no sufficient showing for a Kastigar hearing and the motion is denied as a pre-trial matter but as against the possibilities that something may develop at the trial which would permit the post-trial renewal upon an adequate showing, this denial will be without prejudice to such an application.

It is so ordered.

MR. EHRLICH: Your Honor, may I address myself to your Honor's statements on the record because I wish to note that it was on or about August 22nd or it would have been a week earlier that I received from the office of the United States Attorney Referee Morton's findings and conclusions with respect to the objections on discharge for the defendant Mullenax and at that time --

THE COURT: Why didn't your client turn those over to you prior to August 22nd? These were your client's papers. The government was able to supply you with an extra copy of it. I mean, this is not something that belonged in the government's possession. This is a public record that your client knew all about for a long time and should have supplied you previously. I don't think that you can charge the late delivery, any late delivery by the government to the government.

MR. EHRLICH: Your Honor, it was at or about that time that I first received a letter from Mr. Curran's offices signed by Mr. Sussman making the representation that none of the evidence to be employed at trial would be based on any tainted matter.

THE COURT: Well, it is against that claim and the integrity of that claim that I will permit you to renew the motion for good cause shown at a proper time. You are late now.

This is not the time to try to hobble the trial which is starting next Monday, in two days from now, with a motion belatedly considered and thought of in connection with a proceeding that occurred in 1971 in which your client was a party.

MR. EHRLICH: With all deference to the Court, if I may respond to that, if that be the case, the representation from the office of the United States Attorney was not timely.

THE COURT: Their representation merely was a confirmation of what they believed was the fact and if you had any different view about the matter you should have been making motions in June, July and in August and not a day or two before the trial starts on September 29th.

I don't think there is anything to that. You

cannot assign your belated thought on this subject to the government and we do not just have a continuous stream of motions right down until the date of trial. Motion practice in this court proceeds under specific rules.

At the time of arraignment your client was advised and you were advised, if you were there, that motions had to be made within ten days. For reasonable cause shown I am indulgent about extending those ten days. That does not mean extending them for four months on a motion of this kind where you are sitting with the information constructively since 1971.

MR. EHRLICH: Your Honor, inasmuch as the Court addresses itself to more or less procedural ability in the filing of these motions, rather than the substance thereof, I would like to have the record clear as to certain occurrences, if I may use the term, and explain what the Court considers to be an untimely filed motion.

The first segment that I would like to address myself to is from the time of the reception of the letter from the United States Attorney's Office, annexed as Exhibit B to Mr. Mullenax's notice of motion --

THE COURT: You might tell me why you asked for that letter.

MR. EHRLICH: I did not ask for the letter.

jbjw A 188

THE COURT: This was furnished to you as a volunteered matter.

MR. EHRLICH: Yes, your Honor.

THE COURT: For the purpose of giving you information that you had not solicited?

MR. EHRLICH: That week I had visited with Mr. Sussman for discovery purposes. At that time he handed to me Referee Morton's findings and conclusions of law with respect to the bankruptcy proceedings. That was the first instance I had any knowledge thereof.

Now, reading through that and in addition coupled with the fact of the reception of this letter, I understand that possibly a Kastigar hearing was required at that time, August 19, 1973.

If your Honor would look at the original motion that you ruled upon this morning, he would notice that the United States Attorney's Offices served the motion and subpoena duces tecum at that very time. From the instant I received those motions, which was almost simultaneous with the reception of this letter, I was preparing answering papers to quash the subpoena duces tecum. I completed those papers on August 26, 1975 at which time, as your Honor I believe is cognizant of because I hand-delivered the letter from me to your Honor; it was delivered on or

about September 2nd and that is when I became ill with pneumonia and I was out of the office until September 16, 1975, at which time I appeared before your Honor.

On September 16th I immediately commenced preparation of the motions with respect to inspection of the grand jury minutes, the Kastigar hearings and also for dismissal of the indictment pursuant to Rule 12(b). Those motions were filed in this court September 19, 1975, and were duly served on the offices of the United States Attorney on that date. None of the motions that we are discussing were served by mail. I personally delivered them to both the United States Attorney's Office and the Court.

On September 19th, I filed a supplementary motion and your Honor scheduled argument or scheduled this court date with respect thereto.

Now, does your Honor wish me also to address the time period prior to mid-August 1975?

THE COURT: You can address any point that you want to make of record and I am saying to you this is an untimely motion made on the eve of trial. I have no intention of derailing the trial of this indictment of sixteen defendants, including your client.

This is Friday and the trial is scheduled to start

on Monday. Ample notice of the trial date has been furnished and this belated motion on your part which shows neither particularized need nor sufficient evidentiary support will be denied, except that the denial is without prejudice to renewal as a post-trial matter upon any showing in the light of hindsight and the Court record that may be made in respect to evidence that is offered at the trial.

The motion goes to the scope of the evidence that the government is to offer at the trial. It offers at its own risk the evidence it chooses to submit. Should that evidence turn out to be evidence from a tainted source, your rights are adequately protected. Should the evidence derive from a pure source, you have euphemistically speaking, the problem becomes moot.

There is nothing that requires a suspension of the Court's process at 4:35 on September 26th to conduct a Kastigar type hearing at this time.

If and when evidence has appeared that is directly or indirectly related to a prohibited source, that will be time enough to deal with the subject matter.

So ordered.

MR. EHRLICH: Pursuant to your Honor's permission, may I address the Court with respect to certain issues.

First of all, and I would like to note for the record, your Honor, that the letter received by our offices on August 19, 1975, included with a statement, and I quote, "If you wish to make a more formal record concerning this matter, we would suggest that you do so by motion in advance of the date set for trial of this matter."

Secondly, your Honor --

THE COURT: Who wrote that letter?

MR. EHRLICH: Mr. Curran's offices, by Mr. Sussman.

THE COURT: You have made the motion and I have now given you permission to renew it on the basis of any evidence that appears at the trial that you think it applies to.

MR. EHRLICH: I understand but --

THE COURT: I am not going to anticipate what the government's evidence is going to be.

MR. EHRLICH: Secondly, I would like the record to reflect that it was never my intention to in any way obstruct, that this trial not commence on September 29, 1975.

THE COURT: Then you have accomplished your purpose. You have gotten on the record and we know the

situation.

MR. EHRLICH: Thirdly, your Honor, which I think is the most important point, the High Court in Kastigar stated that once a defendant shows the Court that he was investigated with immunity, immediately the burden of proof shifts upon the prosecution.

The way I understand your Honor's --

THE COURT: I am not changing that burden.

MR. EHRLICH: The way I understand your Honor's order, first, without having access to the grand jury minutes and, secondly, without affording the defendant Mullenax the opportunity for pre-trial Kastigar hearing, first I could not adequately protect his Fifth Amendment rights and secondly such a hearing is mandated by the Court in Kastigar.

THE COURT: You may look up the authorities on the subject of derailing a trial with a belated motion under Kastigar where your position is thoroughly reserved to you.

You know, you might also consider that if there is an acquittal all of this talk is academic and if the case goes otherwise, your position is fully protected.

The government presents whatever evidence it

chooses to present at its peril to establish, at the proper time under the proper circumstances, that there was no taint to the evidence.

I think you will find an opinion of mine on that subject in USA against Cole and there was a full hearing after trial. It is a tax case, to my recollection, and the claim was that evidence was illegally obtained through a variety of sources by agents of the Internal Revenue that were incompetent sources. If you stop in my chambers, I will try to give you the citation.

MR. EHRLICH: For purposes of the record today --

THE COURT: You have made the record.

MR. EHRLICH: There is one additional point, your Honor.

Your Honor addresses himself to the evidence that is going to be introduced at trial. The other notice of motion filed in September 19, 1975 attacked the finding of Mr. Mullenax in the present indictment, and the grand jury proceeding is being attacked, not the question of whether the evidence the prosecution intends to offer at trial is derived from wholly independent and legitimate sources.

THE COURT: It will all be taken up on an

appropriate occasion without any prejudice to you. It cannot be taken up Friday afternoon at a quarter of five before the commencement of trial on Monday.

MR. EHRLICH: If I understand your Honor correctly then, your Honor will set some time for a Kastigar hearing.

THE COURT: You have understood me correctly on the basis of everything I have said so far and there is nothing further I wish to say on this subject. I do not understand what this catechism is all about at this moment.

MR. EHRLICH: Thank you, your Honor.

THE COURT: Now, there is one other motion that we talked about.

You wrote me a letter where you say that you received a large number of exhibits.

MR. EHRLICH: Yes.

THE COURT: That is fine. I am glad that you have them. I find nothing in your letter which would warrant postponing the trial of this multi-party indictment set for September 29th and little merit, no merit, in fact, in the suggestions for a postponement.

The matters that you raise are subjects that you can easily attend to between now and the time when

matters pertaining to your client come out at the trial.

The case with all these defendants is not going to be tried in one day and I do not know what the trial procedure of the government is.

Do you know approximately when reference to matters relating to Mr. Mullenax will be coming in?

MR. MAC DONALD: I think not before the second week unless we go faster than we anticipate.

THE COURT: So counsel has a period of almost two weeks to inform himself on any subject in connection with the exhibits that he is talking about, is that right?

MR. MAC DONALD: Yes, sir.

THE COURT: Very well.

MR. EHRLICH: Your Honor, would it be proper for me to ask that that letter be made part of the record?

THE COURT: It would not only be proper, it has been made part of the record and I have put an endorsement on the back of it, with an order.

MR. EHRLICH: Your Honor, if I may, may we approach the side bar?

THE COURT: We do not have side bar conferences. Perhaps you want to talk to Mr. MacDonald about some subject and by agreement discuss it with me.

MR. EHRLICH: I think your Honor will understand

my intentions if I could approach the bench with Mr. MacDonald off the record.

THE COURT: Well, off the record, come up here.

(Discussion held off the record)

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Rosenberg, Rosenberg & Rockman

Attorneys and Counselors at Law

A 198

HARRY ROSENBERG (1915-1973)
GEORGE ROCKMAN
MARC A. ROSENBERG
MICHAEL M. PERLMAN
JOSEPH B. EHRLICH

Two Hundred Garden City Plaza
Garden City, New York 11530

516-248-4300

October 24, 1975

Hon. Milton Pollack
United States District Judge
United States Court House
Foley Square
New York, New York

Re: United States v. Boyd, et al.
75 Cr 140

Dear Judge Pollack:

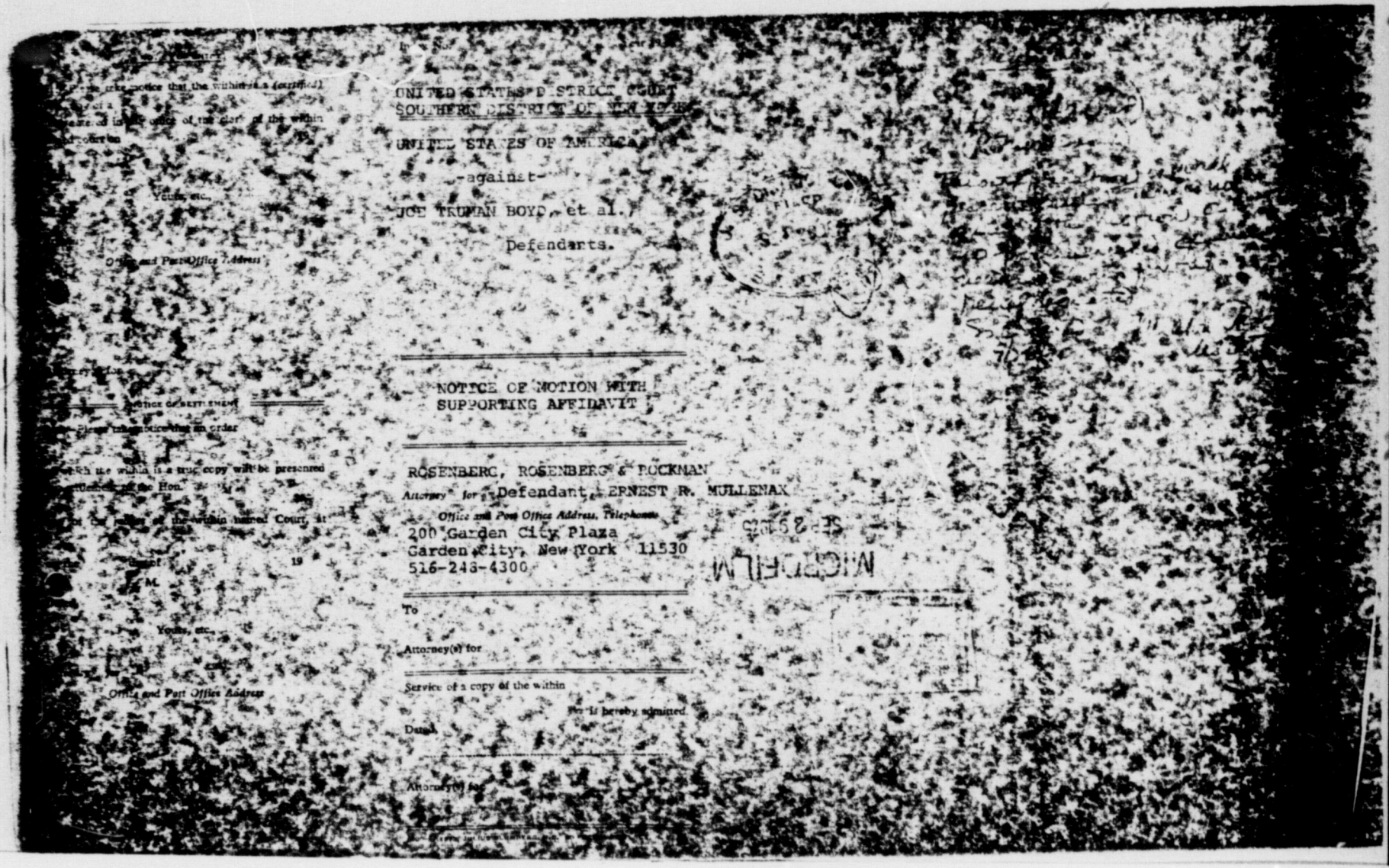
With reference to the court proceedings of September 26, 1975, the undersigned in behalf of the defendant Ernest R. Mullenax respectfully renews the motions for inspection of the grand jury minutes, hearings pursuant to Kastigar v. United States, 406 U.S. 441 (1972), and the dismissal of the prosecution.

It is noted that only one of the five witnesses at trial directly testifying with regard to Mullenax (Chapel, Joiner, Nichols, Mann and Collins) appeared before the grand jury and his testimony before that body with regard to the instant indictment in terms of Mullenax was nearly totally meaningless. Dr. Chapel's grand jury testimony with reference to Mullenax is attached.

Consequently, the government has the affirmative duty to prove that the evidence used before the grand jury finding the indictment was from wholly independent and legitimate sources from the testimony given by Mullenax on or about January 5, 1971 in the course of his bankruptcy proceedings.

The High Court explicitly noted (92 S.Ct. at 1661) that the immunity which Mullenax was vested "prohibits the prosecutorial authorities from using the compelled testimony in any respect, and it therefore insures that the testimony cannot lead to the infliction of criminal penalties on the witness."

ONLY COPY AVAILABLE



Please take notice that the within is a (certified)

true copy of a

entered in the office of the clerk of the within

named Court on

Yours, etc.,

Office and Post Office Address

Notice of Settlement

Please take notice that an order

of which the within is a true copy will be presented

for settlement to the Hon.

one of the judges of the within named Court, at

on the day of

19 at M.

Yours, etc.,

Office and Post Office Address

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

JOE TRUMAN BOYD, et al.,

Defendants.

NOTICE OF MOTION WITH
SUPPORTING AFFIDAVIT

ROSENBERG, ROSENBERG & ROCKMAN

Attorney for Defendant, ERNEST R. MULLENAX

Office and Post Office Address, Telephone

200 Garden City Plaza
Garden City, New York 11530
516-248-4300

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

Mullenax also respectfully submits that his request for grand jury minutes is appropriate. Without it, counsel cannot effectively challenge the sufficiency of the claimed independent proof at any hearing.

In view of the fact that Mr. Nichols, Mr. Mann and Mr. Collins all did not appear before the grand jury - and Mullenax's activities with respect to the State National Bank, Home State Bank and Town & Country Business Trust were central to his presence in the indictment - the government should establish its 'heavy' burden of proof; in particular that the evidence before the grand jury was not tainted or otherwise improper. Anything less would be in contravention of Mullenax's clear and certain Fifth Amendment rights.

A copy of this letter is being sent simultaneously herewith to the United States Attorney for the Southern District of New York to the attention of Mr. Mac Donald and Mr. Sussman.

Respectfully yours,

ROSENBERG, ROSENBERG & ROCKMAN

By_____
JOSEPH B. EHRLICH

JBE:la
Enclosure

New Mexico?

A Oh, I'm sorry. It was in New Mexico. Yes, it certainly was.

Q Did you ever meet Eddy Goodloe in that connection?

A In connection with the mica mine?

Q That's right.

A No. I know him, I've met him but not in connection with the mica mine.

Q In connection with Select Enterprises?

A I believe that I met him before that time. But I also had met him with respect to Select Enterprises as well.

Q What was his contribution to Select Enterprises as you knew it?

A I didn't know it. Unfortunately, I don't remember the time or the place but I do recall having seen him with Boyd and just simply saying hello to him.

Q During the time period that you and Boyd were engaged in these activities in Select?

A Yes.

Q How about James Joiner?

A Yes. Joiner was their frequently. He was--I got the idea that he was pretty much of a partner with Boyd.

Q How about Ernest Mullenax?

A Mullenax, yes, I met him. Of course, I'd known

him for years because we are in the same profession. And I did meet him in connection with Select Enterprises. I don't know what his capacity was. I know that he and his associate, Rouse, were also together. And I know they are in the insurance business but I don't know what they were doing with relation to Select Enterprises.

Q You don't know that Mr. Mullenax was given Select Enterprises stock to pledge at banks for loans?

A Oh, I did hear about one he did over in what was it, Georgia or someplace, some southern state.

Q Mr. Boyd told you that, did he not?

A Yes.

Q Can you tell us what, if anything, Mr. Boyd said in that regard?

A I don't know of anything other than the fact that Mullenax was doing it. At least I don't recall anything other than that.

Q Did Mr. Boyd disclose to you what portion of the proceeds of that loan he hoped to receive from Mullenax?

A No, I don't believe he did.

Q Later did Mr. Boyd confirm to you that Mr. Mullenax had been successful in effecting and placing that loan?

A I believe he did.

Q Do you know today that Mr. Mullenax is no longer

in the United States and has gone to Australia?

A No, I didn't.

Q When is the last time you had any contact with Mr. Mullenax?

A I'd say approximately two years ago. He was in Fort Worth and he was living in Oklahoma at the time and I had a cup of coffee with him at the time.

Q Finally, do you know Mr. Knisely?

A Yes.

Q Can you tell us what his role was with respect to Select Enterprises?

A Well, he, on wherever I saw a sheet of paper of any kind with the name of the president on it, it always said Dr. Mike Knisely, president. So I assumed he was the president of the corporation.

However, I--his part, the part that he played, as far as I can tell, was an inactive one, because I don't remember ever seeing him in the various Select offices or I don't believe I ever saw him with Joe Boyd in regard to Select Enterprises.

I've known Knisely for years, incidentally but I--he certainly was inactive, if anything.

Q Finally, is it your testimony and is it accurate that you received nothing of value in the way of, for exampl

WCMacD:mm

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA, :

- v - : AFFIDAVIT

ERNEST R. MULLENAX, : 75 Cr. 140

Defendant. :

- x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

W. CULLEN MAC DONALD, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York and as such am in charge of the prosecution of this case.

2. This affidavit is submitted in opposition to Mullenax's renewed motions to inspect the entire Grand Jury record and to dismiss the indictment herein on the ground that his compelled bankruptcy testimony tainted that proceeding, and in supplementation of my earlier opposing affidavit dated September 24, 1975.

3. With regard to pages 23-25 of Chapel's Grand Jury transcript, the only new material submitted in support of the current motion, I reaffirm that none of the questions put to Chapel derived from the Mullenax bankruptcy testimony because, as I said in my earlier affidavit, I had "never read" such. I do recall that the independent lead to those

11-3-75 by mail

WCMacD:ma

A 204

questions came from the record in SEC v. Select, 70 Civ. 3795. (See, for example, ¶45 of Exhibit 1 to my earlier affidavit.)

4. In any event, on information and belief, Mullenax's bankruptcy testimony was not compelled over any assertion of his Fifth Amendment privilege and thus the entire motion is groundless.

WHEREFORE, the motion should be dismissed without a hearing.

W. CULLEN MAC DONALD

Sworn to before me
31st day of October, 1975

Notary Public

:dlf

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A 205

UNITED STATES OF AMERICA, :

- v - : AFFIDAVIT

ERNEST R. MULLENAX, : 75 Cr. 140

Defendant. :

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

W. CULLEN MACDONALD, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Thomas J. Cahill, United States Attorney for the Southern District of New York and as such am in charge of the prosecution of this case.

2. This affidavit is submitted in opposition to Mullenax's renewed motions to inspect the entire Grand Jury record and to dismiss the indictment herein on the ground that his compelled bankruptcy testimony tainted that proceeding, and in supplementation of my earlier opposing affidavits dated September 24, 1975 and October 31, 1975.

3. Upon information and belief, Mullenax's testimony was, in fact, being "given by him in the hearing upon objections to his discharge" (11 U.S.C.§25(a)(10)) and, as such, removes his claim to immunization.

A 206
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4. In any event, on information and belief, Mullenax's bankruptcy testimony was not compelled over any assertion of his Fifth Amendment privilege and thus the entire motion is groundless.

WHEREFORE, the motion should be dismissed without a hearing.

W. CULLEN MACDONALD
Assistant United States Attorney

Sworn to before me this

day of November, 1975.

NOTARY PUBLIC

U.S. DISTRICT COURT
FILED
NOV 26 1975
S.D. OF N.Y.

A 207

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

v. :

JOE TRUMAN BOYD, et al, : 75 CR. 140(MP)

Defendants. :

#43456

OPINION

APPEARANCES:

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Attorneys for Defendant (Mullenax)
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Garden City, New York 11530
By: Joseph B. Ehrlich, Esq.

THOMAS J. CAHILL
Acting United States Attorney for the
Southern District of New York
One St. Andrews Plaza
New York, N.Y. 10007
By: W. Cullen MacDonald, Esq.
Assistant United States Attorney

MILTON POLLACK, District Judge.

MILTON POLLACK, District Judge.

Ernest Mullenax, one of the defendants in this securities fraud conspiracy case, has renewed his pretrial motions for inspection of the Grand Jury minutes, a hearing to determine whether evidence submitted to the Grand Jury was tainted and dismissal of the indictment against him. Those motions were denied before trial, but leave was granted to renew them post-trial.

On February 10, 1975 an indictment was filed which charged that Mullenax was a member of a conspiracy to obtain control of a shell corporation (subsequently named "Select Enterprises, Inc.") without substantial assets, to artificially inflate the price of its shares and to sell, distribute and pledge shares of this shell at exorbitant prices.

At trial, the government alleged that Mullenax used Select stock which he knew to be worth less than the represented value as collateral for a $60,000 loan from the State National Bank of Alabama, for a $25,000 loan from the Town and Country Business Trust, and as additional collateral for an outstanding loan of $45,000 with the Home

State Bank. A jury convicted the defendant of conspiracy to violate 18 U.S.C. §§ 1001, 1341 and 1343 and 15 U.S.C. §§ 77e, 77q and 77x and of direct violations of all these statutes except 18 U.S.C. § 1001.

On January 5, 1971, pursuant to his voluntary petition in bankruptcy, the defendant testified before the first meeting of creditors. His testimony touched on transactions which were before the Grand Jury that returned the indictment. In his bankruptcy testimony the defendant mentioned at least one person who was also called as a witness at the trial of this action. In addition, the financial institutions involved in the above described loan transactions apparently took part in this bankruptcy proceeding.

Under 11 U.S.C.A. § 25(a)(10)

> no [bankruptcy] testimony, or any evidence which is directly or indirectly derived from such testimony, given by him [the bankrupt] shall be offered in evidence against him in any criminal proceeding, except such testimony as may be given by him in the hearing upon objections to his discharge.

This provision, effective on December 15, 1970, clearly covers such testimony as was given by defendant Mullenax. Organized Crime Control Act of 1970, Act of Oct. 15, 1970, P.L. 91-452, Title II, § 260, 84 Stat. 931-932.

The government contends that it did not offer or use at trial the defendant's bankruptcy testimony or any evidence which was directly or indirectly derived therefrom.

Defendant argues that the government must carry a "heavy burden" to demonstrate that it did not make use or derivative use of Mullenax's bankruptcy testimony, Kastigar v. United States, 406 U.S. 441, 461-2 (1972); i.e., that the government must show that it uncovered the involvement of the State National Bank, the Home State Bank and the Town and Country Trust through legitimate, independent sources and that the proof offered to the Grand Jury came from sources other than defendant's bankruptcy testimony.

Affidavits from the Assistant United States Attorney in charge of the Grand Jury and the trial proceedings in this case assert that, while the government had possession of defendant's bankruptcy testimony, no government attorney read or made use of that testimony.

The government affidavits also declare that the involvement of the State National and Home State Banks

was discovered through a 1970 SEC investigator's affidavit and that the involvement of the Town and Country Trust was revealed in a 1972 letter to the SEC from an attorney for the Trust. In addition, the government points to the record in the related civil case, SEC v. Select, 70 Civ. 3795, as the source for the questions asked of William Chapel, the only witness to testify against Mullenax before the Grand Jury. That record includes the 1970 affidavit.

Finally, the government affiant asserts, on information and belief, that the bankrupt's testimony was not compelled over any assertion of the defendant's Fifth Amendment privilege and that such testimony was "given by him in the hearing upon objections to his discharge" so as to eliminate any possibility under 11 U.S.C.A. § 25 (a)(10) that Mullenax's bankruptcy testimony was immunized.

The government's argument that the first meeting of creditors was a "hearing on objections to" Mullenax's discharge is unavailing. Such a hearing was apparently held in August of 1972, cf. In the Matter of Ernest Richard Mullenax, Bankruptcy No. 19,798-B-2 (D. Kan., filed July 5,

1973), but the testimony given by the bankrupt in that hearing is not the subject of this motion. By providing in section 14(b)(1) of the Bankruptcy Act, 11 U.S.C.A. § 32(b)(1) (1974 Supp.), that the Court should fix a time for the filing of objections to the bankrupt's discharge between 30 and 90 days "after the first date set for the first meeting of creditors," the Congress clearly intended that hearings on objections to the discharge would be held well after the first meeting of creditors. See 1A Collier on Bankruptcy, ¶14.06 at 1273-4 (14 ed. 1975).

The transcript of Mullenax's testimony at the first meeting of creditors, which defendant submitted to this Court and which is the subject of this motion, contains no evidence that defendant actually asserted his Fifth Amendment rights or affirmatively invoked the protection of the bankruptcy immunity statute. See United States v. Dorneau, 491 F.2d 473, 480 n.13 (2d Cir.), cert. denied, 419 U.S. 872 (1974); United States v. Goodwin, 470 F.2d 893, 903-4 (5th Cir. 1972), cert. denied, 411 U.S. 969 (1973). But the issue of whether or not Mullenax nevertheless received immunity is one that the

Court need not reach in light of its finding that there was no possibility of a taint from the evidence before the Grand Jury.

The testimony relating to this defendant before the Grand Jury was furnished to the defendant in connection with the pretrial and trial proceedings herein. An in camera inspection of all the Grand Jury minutes conducted by this Court reveals unequivocally that no reference was made to and no direct or derivative use made of Mullenax's bankruptcy testimony. The government's affidavits having adequately demonstrated independent, legitimate sources for the documentary evidence submitted to the Grand Jury and for the questioning of Chapel before the Grand Jury, and this evidence being the sum total presented to the Grand Jury, there is no need for a Kastigar hearing to explore the possibility of taint and dismissal of the indictment is not required. In addition, Chapel's testimony supplies legitimate and independent evidence sufficient to support the indictment. See United States v. James, 493 F.2d 323, 326 (2d Cir.), cert. denied, 419 U.S. 894 (1974).

Unlike the situation faced by Judge Metzner in United States v. Dorneau, 356 F. Supp. 1091 (S.D.N.Y. 1973)[1/], defendant Mullenax has been given access to all of the evidence against him which was submitted to the Grand Jury. He has received the relevant portion of Chapel's testimony and had access to all relevant documents examined by the Grand Jury, which documents were also admitted as

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1/ In Dorneau, Judge Metzner ordered that defendant was to be allowed to inspect the Grand Jury minutes on the grounds that the Court had "neither the time nor the competence" to conduct an effective in camera inspection of the minutes. Dorneau, supra, at 1100. Judge Metzner later granted defendant's request for a Kastigar hearing and subsequently dismissed the indictment. 359 F. Supp. 684 (S.D.N.Y. 1973). That dismissal was later reversed on the ground that Dorneau had received only use immunity under the old version of § 25(a)(10) (which is not applicable here) and the government had not violated such use immunity. United States v. Dorneau, 491 F.2d 473, 480 (2d Cir.), cert. denied, 419 U.S. 872 (1974).

In this case, given the aid of the government affidavits, the task of searching for a possible taint is not so complex nor is the margin for error so great as to render in camera inspection an insufficient procedure. See Alderman v. United States, 394 U.S. 165, 182 (1969), quoted in, United States v. Dorneau, 356 F. Supp. 1091, 1100 (S.D. N.Y. 1973). The government's allegations regarding the lack of any taint were based on actual knowledge rather than "information and belief." The government affiant had handled the Grand Jury proceedings, whereas in Dorneau the affiant had not.

trial exhibits. Defendant has not pointed to and this Court cannot find any part of this evidence which might not have been derived from the independent and legitimate sources described in the government affidavits.

Accordingly, the defendant's renewed motions are all denied.

SO ORDERED.

November 18, 1975

Milton Pollack
U.S. District Judge

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USA

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	
vs.	75 Cr. 140 75 Cr. 346
JOE TRUMAN BOYD, ERNEST DARWIN GOODLOE, ROBERT E. FORD, SELWYN WEBER, EMERSON F. TITLOW, ERNEST R. MULLENAX, M. S. KNISELY, WILLIAM WAYNE BARNETT, MARVIN J. RAPPAPORT, STANELY SCHLEGER, EDWARD VANASCO, ROGER BISSETT, and MICHAEL GARDNER,	
Defendants.	

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10/1 — 539

Before:

HON. MILTON POLLACK,

District Judge.

New York, September 29, 1975;
10.00 o'clock a.m.
(Room 1305)

APPEARANCES:

PAUL J. CURRAN, Esq.,
United States Attorney for the
Southern District of New York:

BY: W. CULLEN MacDONALD, Esq.,
HOWARD S. SUSSMAN, Esq., and
PETER QUIGLEY, Esq., (SEC), of Counsel.

pgs

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Attorney for Defendant
Ernest Darwin Goodloe.

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Attorney for Defendant
Robert E. Ford.

ALBERT KRIEGER, Esq.,
Attorney for Defendant
Selwyn Weber.

WILLIAM RICHMAN, Esq.,
Attorney for Defendant
Emerson F. Titlow.

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BY: JOSEPH B. EHRLICH, Esq., of Counsel.

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Edward Vanasco.

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Roger Bissett;

BY: PAUL ROONEY, Esq.,
Of Counsel.

PATRICK F. BRODERICK, Esq.,
Attorney for Defendant
Michael Gardner
38-08 Bell Boulevard
Bayside, N. Y. 11361
229-6070.

(A jury of twelve plus four alternates were duly impaneled and sworn.)

AFTERNOON SESSION

(2.50 p.m.

(Jury in box.)

THE COURT: Mr. MacDonald, you may proceed.

MR. MacDONALD: With the Court's permission, may we display the chart as an aid in the Government's opening?

THE COURT: Is that chart something you intend to produce in evidence later on?

MR. MacDONALD: We do, your Honor.

THE COURT: You may use it.

MR. EHRLICH: Objection, your Honor.

THE COURT: Overruled.

MR. MacDONALD: May it please the Court, fellow counsel, Mr. Foreman, and ladies and gentlemen of the jury, this is a criminal case in which the United States charges these defendants with having violated several of its laws.

Count 1 of the grand jury indictment charges, in legal indictment language, that they combined, conspired, confederated, and agreed together, with one another, and with others to the grand jury both known and unknown; in plain language, they simply agreed to violate six different numbered provisions of the United States Criminal Code and of the securities laws passed by Congress following the stock market crash in 1929.

Specific overt acts are alleged in Count 1 which were undertaken by various of the defendants to carry out that agreement. Those overt acts are specified for the reason it is not a crime for two persons to agree to rob a bank and do nothing further to carry out that agreement; however, when they take some action to carry it out, such as obtaining the getaway car or buying the dynamite, then the conspiracy crime is complete.

The remaining counts of the indictment charge completed offenses in several categories.

The first category includes the unlawful use of the mails and telephones in carrying out a scheme and artifice to defraud.

And the second category, there are several uses, unlawful uses, of means and instrumentalities of transportation and communication in commerce during a scheme to fraudulently sell securities.

Thirdly, and somewhat related, is additional such uses of those instrumentalities to sell securities which had not previously been registered for sale with the Securities and Exchange Commission.

The last two counts charge the defendants with having fraudulently prepared and backdated two contracts which they thereafter submitted to the Securities and

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Exchange Commission regional offices across the street in the Federal Plaza Building.

I have referred to securities so far in the opening. What securities are we talking about in this case? They are the common stock certificates of a Nevada corporation which was known during 1970 as Select Enterprises, Inc.

You know what owning stock is. It is like owning a small organization or, at least, the portion represented by that stock in the business underlined. If you own 100 shares of General Motors, you own a small part of General Motors.

It is not like other goods. It is not like a grocery store selling apples, where you can inspect the apples and see if they are a good buy, appropriately priced, or perhaps they are overripe.

All stock certificates look the same. Stock certificates can be 100 shares of IBM or General Motors or it could be a bankrupt company, but you cannot differentiate by looking at the face of this certificate. That's one of the reasons that Congress passed the securities laws requiring, in general, truthfulness in transactions.

One of the means Congress selected was to

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require the registration of securities with the Securities and Exchange Commission prior to the issuance or distribution of those securities.

In addition, it forbade all statements about the company or the people behind it unless they were wholly truthful.

MR. EHRLICH: Objection, your Honor. This is beyond the scope of opening.

MR. BERGER: Same objection, your Honor.

THE COURT: Objection overruled.

MR. MacDONALD: Not only are financial statements required to be truthful but other pieces of paper too: prospectuses, brochures, and letters from the offices, news releases, and oral statements about the company and its affairs; in all respects they must be candid.

In short, in this country, if you deal in stock and use the telephone or mails and other instrumentalities of communication and transportation you must be candid.

The evidence will come from witnesses who take the witness stand and from any exhibits that will be received in evidence.

In the late fall of 1969 in an apartment house in Lubbock, Texas two men discussed how to make money off a shell corporation. The several stages of that

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endeavor are as old as stock itself. It includes, in the first instance, the location of a dormant, empty, corporate shell, one which had been previously used in the past and had occasion for stock to be issued to the shareholders who possessed and owned that company but was now no longer so employed. It had to be empty. It had no assets and no business and then the plan was to take control of that shell and thereafter, in the second stage, cause assets of apparent value to be transferred into it so it looked like it had something worthwhile.

Then the third stage where the parties doing this, the promotors, who were experts themselves in the ways of Wall Street, they would sell some of the shares of stock representing their control; that would be traded on the marketplace and thus would have an apparent value themselves, a value that buyers and sellers would be willing to give or take in the course of the transaction.

That would set the final stage, or the fourth stage, which was to sell other shares controlled by the promoters for money, or promoting anything of value to the buying public.

One of the two men is Joe Truman Boyd, the defendant seated in the brown suit, white shirt, third in from the end; the other one, James Joiner, also a defendant

in this case not now on trial.

They met that December evening in 1969 and decided and agreed that they would try to obtain a shell corporation for themselves.

A few weeks later Boyd, who had undertaken to locate an empty shell, reported back he had discovered three such shells, two in Salt Lake City and one in Nevada. All three had a large number of shares issued, and the two in Salt Lake City still had those shares in the hands or, more likely, in the attics or bottom desk drawers of shareholders; but the one in Nevada had an advantage: all of its shares were intact and capable of being delivered by the seller.

Boyd and Joiner consulted with another person who was then involved in a shell manipulation of his own concerning who might offer them expertise in making a market or, more appropriately, perhaps manipulating or faking a market in New York with respect to those shares, and this other person suggested the man he was using in New York, Alan Segal, might be willing to do it for Boyd and Joiner.

Segal at that time had been convicted in this courthouse several times of crimes involving transactions in securities and had been enjoined by the Attorney General of the State of New York from further acting as a broker-dealer.

MR. SEGAL: Objection.

MR. MAC DONALD: Mr. Segal is a defendant in this case who is not on trial.

Thereafter on or about January 13, 1970, Segal was introduced to Boyd one morning at the coffee shop at the Pioneer Hotel in Reno, Nevada and there Boyd proposed to Segal that he and Joiner were about to obtain a shell that morning from two Nevada state senators and would Segal be willing to carry out the marketmaking role in respect of the stock once they obtained the stock.

Segal was reluctant because he had previously, as he put it, been backdoored or doublecrossed by his partners in that other promotion. But Boyd overcame that by a promise of doing anything necessary so that it would not heppen in this case. Anything that needed to be attached to make sure that the partnership would be honored would be brought in.

That afternoon, Joiner joined them and Boyd proudly displayed a letter on the letterhead of a Nevada

law partnership, Bissett & Logar, signed by Roger Bissett, certifying to whom it may concern the capital structure of an old Nevada corporation, then more than fifty years old, called the Goldfield Candelaria Cooperative Mining Company.

Mr. Bissett is a defendant in this case and is seated in the third row against the wall on the far side of the courtroom.

He signed that letter. Segal read the letter, tentatively agreed that he would be willing to serve in that role as the marketmaker and told Boyd and Joiner that it was necessary that they actually get the assets that they were going to use into the shell; the deeds transferring the assets must be recorded at the county courthouses, stamped in with a time and date so that a balance sheet might be certified by a public accountant saying that the assets were into that company and that they had the values claimed.

On the airplane to New York Segal showed the Bissett letter to his attorney, a New York attorney by the name of Marvin Rappaport.

Mr. Rappaport is a defendant in this case and is seated with the blue tie and yellow shirt against the railing toward the front door, to the right of the man

in the brown shirt.

Mr. Rappaport was told by Mr. Segal as he examined the Bissett letter that this offered an opportunity unlike the previous occasion where he would not be back-doored because in this instance all of the shares were intact or, in the vernacular, he literally had the box of all the stock in this corporation or at least a promise of it because he did not have it at that moment.

On the airplane back to Texas, Boyd and Joiner examined together the agreement by which the sellers, Emerson F. Titlow and associates, agreed to sell this shell corporation for $40,000.

Mr. Titlow is a defendant in this case and is seated in the front row with the blue shirt, the next man to the right.

And then they also discussed who might be appropriate to use as officers and directors of the corporation. Mr. Boyd suggested the two old friends of his, Selwyn Weber, an attorney in Odessa, Texas and Michael S. Knisley, a chiropractor friend in Midland -- sometimes for that reason referred to as Dr. Knisley -- would be willing perhaps to serve as a secretary.

MR. EHRLICH: Objection.

THE COURT: Overruled.

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MR. MAC DONALD: Secretary and president respectively of the shell corporation and lend their signatures to that endeavor.

During the following week, Boyd traveled in Texas to a bank to arrange to obtain the $40,000 to buy the shell and then traveled to meet with Robert E. Ford, a defendant in the case seated closest to you with the blue tie, and his client, Darwin Goodloe, with the maroon jacket seated three in, with respect to Mr. Goodloe's transferring a New Mexico Mica Mine as the first asset into this corporation.

A balance sheet was obtained, certified by the gentleman seated in the first row on the left-hand side, William Wayne Barnett, an accountant, an Abilene accountant, who placed a value as Mr. Goodlow had reported to him of $19 million on that Mica Mine.

MR. RHODES: Objection, your Honor. I would ask the Court to instruct the jury with regard to this matter, that counsel has stated at this point a stated fact which in effect is not a violation of the law.

THE COURT: This is what you intend to prove?

MR. MAC DONALD: We do, your Honor.

THE COURT: Overruled. Go ahead.

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MR. RHODES: Not my exception.

MR. MAC DONALD: Thereafter, so armed, Boyd and Joiner traveled back to Reno, Nevada, tc a meeting with Bissett and Titlow at which time the transaction was completed.

His cash was paid to Mr. Bissett, who was acting as paymaster or in legal parlance the escrowee and he in turn paid overall but $750 of the $40,00 to Mr. Titlow and others.

After a brief Texas stopover, Boyd then traveled to New York with his briefcase chock-full of the certificates which he had purchased which represented the entire shareholdings of this corporation.

He arrived in New York and went to Alan Segal's offices where he met an officemate, the defendant, Michael Gardner, seated to the far left against the wall in front of the green blackboard, who was himself well experienced in the broker-dealer business in New York and whose experience in that regard would prove useful in the weeks to come in making a market.

Pursuant to the commitment to make it impossible to be double-crossed, Mr. Boyd went downstairs in the office building where Segal's offices were and locked up in a safe deposit box which required two keys to

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open the stock which he had brought with him to New York, one key he would take back to Texas and the other key Segal would keep and thus neither partner would have to worry about the other selling stock in an unauthorized fashion.

It was literally in the box and locked under their joint control.

Because the balance sheet was incorrect, Boyd had to go back to Texas to obtain Select Enterprises' first balance sheet and there, with his lawyer friend Weber, they obtained the first Select balance sheet which included in addition to that New Mexico Mica Mine some abandoned oil wells and vacant buildings on Texas land which all together were valued in that first balance sheet at $24 million approximately.

That value was represented by apparently 1.5 million shares, said to be outstanding in the hands of the shareholders. Off of the same typewriter in Mr. Weber's offices came a first report to shareholders, signed by Knisley as the president which disclosed in corporate parlance those acquisitions of mines and oil properties.

Boyd then returned to New York, showed these documents to Segal and together with Gardner and the defendant Schleger, a New York certified public accountant,

wearing the brown shirt, they examined them.

Later that evening, Boyd had a chance to deliver several copies to financial public relations consultants from Wall Street who were introduced to him by Gardner.

Now that the first two stages were completed, the shell had been obtained and control of it and assets of apparent value had been placed inside, it was time for the third stage, the marketmaking activities to begin.

Segal and Gardner arranged for broker-dealers in New York to enter the pink sheets, to quote the prices for that stock. The pink sheets are essentially a newspaper which appear five business days a week on brokers' desks across the country and contain really nothing more than the names and telephone numbers of all the brokers in teh country who are interested in particular stocks, and sometimes the prices those brokers might be willing to pay or might be willing to receive for shares of stock are also included.

MR. EHRLICH: Objection, your Honor. In the nature of testimony.

THE COURT: Mr. Ehrlich and the other gentlemen, you seem not to be thoroughly aware of what I think is the rule and that is that the government may outline the evidence

it intends to establish.

And making the statement that he makes in connection with the pink sheets --

MR. EHRLICH: I understand that.

THE COURT: -- is definitely something that will figure in the evidence.

Overruled.

MR. EHRLICH: Thank you, your Honor.

MR. MAC DONALD: Two brokers who agreed to enter the pink sheets with quotes, two brokers did agree at the outset, one of them was named Karen Company which was a front for the defendant Edward Vanasco, seated in the corner of the railing.

Mr. Vanasco himself had had previous open relationships in the securities business but now he was conducting that business only through others.

During the second week of February, as is indicated on the chart, the quotations were entered in the pink sheets for the first time and transactions and trades actually began.

As you can see from the chart, not many thousands of shares were traded initially. In fact, virtually all of those shares were trades that Alan Segal was directly between brokerage accounts controlled by

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him.

He would have an account with one broker in one name, sell 100 shares to a second broker with an account there in a different name and that transaction would look like, to the outward appearance, as if the hundred shares had really had the value that it was sold at.

In fact, he was able to fix whatever value he dictated and the $15 to $18 price range for the first trades had been dictated in the original agreement. That was a condition by which Boyd and Joiner hired Segal.

Toward the latter part of February, Segal and Gardner and others made some loans at New York banks for several thousands of dollars and tens of thousands secured by other shares which were not in the locked box but which had been given to him for the purpose of making such a market and making such loans.

On February 20th, Friday morning, the bubble or dream of this $25 million corporation was burst when the SEC walked into one of the brokerage houses in New York and announced that it was investigating the company.

On that day, Segal called Boyd and Joiner and immediately began plans to cover up what had happened thus far. It was now critically essential to obtain the deeds

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and make sure they were recorded in the county courthouses to show that the assets were in the shell.

It was, of course, important to get the certified balance sheet because the one obtained earlier was not certified and a certified statement was essential.

The broker-dealers had been requested by the SEC to produce what is known in their trade as due diligence files to see if they had been complying with their obligation under the Securities Laws to have used due diligence in investigating the company, to see if the prices which they were quoting to the world was a real valid one or was it factitious and of course their files were virtually empty because they had a single one page balance sheet for $25 million and a single one page letter of acquisition.

Rappaport and Segal hit upon the idea of perhaps making it appear as if real tangible assets, unlike Mica Mines or oil in the ground, were to be given to Select Enterprises in exchange for its stock so that when someone divided the price or value of those assets by the number of shares, the same price that had been employed so far would result. For example, Rappaport and Segal controlled a resort hotel in Reno, Nevada, a gambling casino, and also a client of Rappaport's law firm, a furniture company in Reading, Pennsylvania, which had been making

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furniture for some years and had plants in two locations in the country, if those could be under a contract in the company then maybe the broker-dealers who had been trading the stock at that rate would have been entitled to rely on those contracts and not simply on the word of a disbarred broker-dealer in New York.

Of course to do that, it would be necessary to backdate the contracts from February 20th and thereafter when they were actually made to a time before the broker-dealers first started quoting the sheet in early February and as you may expect, backdateing proved no impediment.

That was promptly done. There was an all night session in New York at which time these two contracts were prepared and the following morning they were signed by half of the parties and immediately delivered to the brokerage houses who that afternoon delivered them as part of their due diligence files to the SEC.

The following Sunday Segal flew to Texas and delivered the original agreements to Knisley and Boyd and Knisley there signed as president of Select and they were thereafter delivered or redelivered to the Fort Worth Regional Office of the SEC.

March was mainly a time of lawyers and

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accountants activities in preparing contracts, deeds, opinion letters for presentation to the SEC.

It should be noted that most of the lawyers and accountants in this case had no stock holdings in their own names in Select Enterprises. Rather they were principal motivated at this stage by a desire to cover up or minimize their original contributions to the acquisition of this shell, to its having been started into the marketplace as it had been, not to mention the relatively small legal or accounting fees which they had either received or been promised.

When those documents were not all together false, the documents presented to the SEC, they revealed they were only partially truthful. For example, Bissett prepared two contracts transferring property in Texas controlled by a man named Grube into Select.

One of the contracts would find its way into the SEC while the other would disclose the true nature of the agreement between the parties. Similarly, in Texas, Weber prepared a similar set of duplicate or payroll agreements and also some board of directors minutes which recited false events.

In Abilene, Texas, Ford and Barnett collaborated in the presentation of two more balance sheets, one in

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early March which was unaudited and one in late March which was certified by Barnett and at that time he reported that Select Enterprises had assets valued at approximately $50 million.

The difference between the earlier balance sheet and the $50 million one was represented by a recent acquisition of California land supposedly worth $25 million.

At the end of the month as you can see on the chart, the SEC suspended trading for ten days and broker-dealers were not permitted during that period to trade any further in Select stock.

It continued its inquiries into April by subpoenaing various individuals connected with the corporation and asking them to produce records and to testify and you will find and hear that much of the testimony that was given was perjurious and wilfully so.

While that was going on openly to the Securities and Exchange Commission behind the scenes Boyd was endeavoring to get, as soon as the trading suspension period was over and perhaps wasn't renewed by the SEC, other brokers to re-enter the sheets with further quotes. He was able to persuade a broker, a Las Vegas broker, who in turn persuaded a New York broker to actually enter the sheets and this was for the purpose that he and Joiner

and Goodloe worked on through it and that is to obtain other people, front people, to go to banks or anybody willing to lend money or give property in exchange for the stock so that if they were to check the pink sheets or consult with Wall Street they would see that the stock had an apparent value.

The defendant Ernest Mullenax for example, seated in the front row with the blue coat on, agreed to and actually did make two bank loans in May and July which he secured by shares of Select stock and he shared the proceeds of those loans with Boyd, Joiner and others.

Throughout these activities, little of the truth was revealed. For example, the California land valued at $25 million said and certified by Mr. Barnett to have been owned by Select Enterprises in actuality -- and I should also note in passing there was a letter to shareholders which described that land as being in the rich fertile Imperial Valley in California -- was in actuality not located in the Imperial Valley. Indeed, part of the land was located in another county away, was not owned by Select Enterprises but by the United States government in the main and had last been used, since it was mainly rock and desert, as a gunnery range.

The mines had been purchased for $10,000 or

$20,000. There had been no Mica discovered during the five year period, there had not been a flake produced commercially and there had been no discovery to account for a raise in value to $19 million.

One final word, the government's purpose as you know is to show, prove to you ladies and gentlemen beyond a reasonable doubt the guilt of each of these defendants. In doing so, it would be convenient and nice if all of the witnesses were impartial bystanders who happened to be on the street corner for example and saw the car crash but such people are not, that is impartial bystanders, usually admitted to the inner councils of a conspiracy.

The government rather will show and report to you what was going on behind closed doors by calling to the witness stand several persons who have pleaded guilty in this case and who will report to you what they did and what the others of the defendants did with them back in the spring of 1970.

We call this fact to your attention not to apologize for. We make no blanket apologies nor blanket endorsement for any witnesses or class of witnesses.

Rather we call it to your attention so you will exercise appropriate restraint in listening and

weighing such testimony against the testimony of other witnesses and against the documents and exhibits which are received in evidence.

Ladies and gentlemen of the jury, when you have had an opportunity to listen to all of the witnesses and to review all of the exhibits, the government submits that you will have no reasonable doubt that each of these defendants is guilty as charged by the grand jury's indictment.

Thank you.

THE COURT: Mr. Segal.

MR. SEGAL: Your Honor, ladies and gentlemen, gentlemen:

The opening by the government has indicated that the charged in this case will be proven and of course this presentation which are embodied in the indictment, which is the basis upon which this trial proceeds, has been, as a result of compilation of various facts which have been delivered to a grand jury by the government.

Now, one of the problems that we have always in a trial of this kind is that in the course of defending a case, the captions reading United States of America assert solidity and validity about the charges but you

doubt in his favor.

THE COURT: Mr. Ehrlich.

MR. EHRLICH: With your Honor's permission, members of the prosecution staff, defense counsel, ladies and gentlemen of the jury:

I don't propose to take anywhere as long as my distinguished and learned friend, Mr. MacDonald, nor do I intend to duplicate any of the other material discussed by my colleagues at the defense table.

However, I do want to emphasize that I represent the defendant Mullenax.

Dr. Mullenax, would you please stand?

Thank you.

Now, this is very important, that I only represent Dr. Mullenax. I am only entitled to speak in his behalf. The other defendants in this case are each respectively represented by distinguished counsel.

However, as you have heard and I want to emphasize this, each defendant must be judged separately, that you must determine separately the of each defendant and consider the evidence only with respect to him.

There is going to be a mass of documentation in this case. There is going to be tons of documents, if

I may put it that way. You have to consider which documents, what evidence, as you will hear from testimony on the witness stand, apply to Dr. Mullenax.

Now, in this regard, let me point out the problem. I have heard the opening statement of Mr. MacDonald and he has gone over many of the allegations in this indictment.

For instance, a revival of the dormant Nevada corporation, acquisition of several companies, inflation of assets. These are allegations.

I again remind you that the prosecution has the burden of proof of each element of each offense beyond a reasonable doubt.

It is a serious burden and it is one that the prosecution must discharge before you can find any defendant guilty of any of the alleged offenses.

Moreover, there are allegations, false financial statements, perjurious testimony, false statements with respect to the SEC.

Now, if you were listening to Mr MacDonald's opening statement carefully, you will see that Dr. Mullenax's name came in at the tail end. You did not hear his name with respect to any of these allegations. Your determination has to be based on the evidence in this case.

Again as I say, the testimony and the documentation. What we say is not evidence but I plead with you, because it shall be a long time before I again speak to you in this manner, that you consider all the evidence, if any, with respect to Dr.Mullenax.

He has to be treated independently, separately. For instance, we may be sitting here for a period of time before Dr. Mullenax's name comes up and then you may hear it and much other evidence with respect to other allegations in the indictment.

Please don't forget Dr. Mullenax because at the end of this case, when I speak to you again, I will give you reasons for doubt as to the defendant Mullenax's guilt and I want you to remember my opening in that regard because again as other counsel have said, there is a presumption of innocence and that is a very important principle of our republic.

Now, the complimentary thing is the burden of proof of the prosecution, that they must show, establish this beyond a reasonable doubt and I will give you reasons for doubt when I review the evidence and argue it to you at the conclusion of the case.

Thank you very much.

THE COURT: Mr. Lesser.

(Pause.)

THE COURT: Any redirect examination?

MR. MacDONALD: No.

THE COURT: Thank you very much, Mrs. Smith. You are excused.

(Witness excused.)

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W I L L I A M C. C H A P E L , called as a witness by the Government, being first duly sworn, testified as follows:

MR. EHRLICH: Your Honor, I handed a communication to the Court this morning.

(Pause.)

THE COURT: This goes to your preparation for cross-examination. We will deal with that separately.

This may be marked as Court Exhibit 8.

(Court Exhibit 8 marked.)

DIRECT EXAMINATION

BY MR. SUSSMAN:

Q Dr. Chapel, state how old you are, what city you live in, and what you do for a living?

A I am 51. I live in New Orleans and I am a chiropractor.

Q Do you have any understanding with the United

States Government concerning your liability to prosecution with regard to Select Enterprises?

A Yes. It is my understanding that I have been given immunity from prosecution and relative to anything that I have done relative to Select Enterprises, including any false testimony I have given.

Q That you are giving or have given?

A Have given.

Q I direct your attention to 1969 and 1970. Tell the jury where you lived at that time and what you did then for a living?

A At that time I lived in Fort Worth, Texas and I was the president of a company called Economic Management Services.

Q Did you have occasion in that period of time, 1969 to 1970, to hear of a company called Select Enterprises, Inc.?

A Yes, I did.

Q Tell us, please, when you first heard of it, who you heard it from?

A The first that I heard of Select was on January 20th.

Q What year was that?

A That would be 1970. I heard it from Joe Boyd.

Q Do you see Mr. Boyd in the courtroom today?

A Yes, I do (indicating).

(The defendant Boyd arose.)

MR. SEGAL: We will concede identification.

A (Continuing) The gentleman right over there.

Q Tell us where you were when you first heard of Select Enterprises?

A I was in an office that I had rented in the Wedgewood Building in Fort Worth.

Q Did you hear about Select Enterprises in person?

A No. This was by telephone.

Q Tell us, please, who were the parties to that telephone conversation and what was said?

A So far as I know only Joe Boyd and myself were, since I was alone in my office.

Joe indicated that he had completed his plans to secure what he referred to as a shell corporation, and that he had secured some substantial assets to put into the corporation. He indicated that its value was in the neighborhood of 25, I believe, million dollars, and that it was listed on the over-the-counter market selling for $15 a share.

Q Did he say anything in particular concerning the assets you have mentioned?

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A Yes. He indicated that there was a mica mine and some oil properties and an office building in Midland, Texas.

Q Did he say anything concerning Economic Management Services?

A Yes. He indicated at that time that he was ready to help me financially in that regard.

Q Did there come a time thereafter when you again spoke with Mr. Boyd or anyone concerning Select Enterprises?

A Yes.

Q Tell us, please, when the next time was, who was present, what was said, and where it was?

A This next conversation would be approximately the middle of February, maybe a few days earlier than that, in 1970, and to the best of my recollection it occurred at 1 Main Place in Dallas, and present at that conference were myself, Mike Bickel, my associate in EMS, and Joe. I believe Jim Joiner, though my memory on whether or not Jim was there is not completely perfect.

Q Is that an office building?

A It is an office building in downtown Dallas.

Q Did you meet in any particular office in that building?

A Yes. It was an office that was rented by

my associate, Mike Bichel, and previously EMS had had an office there. Its number was 2717 1 Main Place.

Q Can you tell the jury, please, what the conversation was on that occasion?

A On that occasion we discussed somewhat the same information that was discussed on the telephone but with more detail. Once again the shell corporation was explained. The assets of the mica mine and the oil properties and the office building were mentioned. The value of Select was mentioned, and beyond that we discussed the details of a possible purchase of Economic Management Services by Select by way of a stock trade situation.

Q Tell the jury what those details were, please.

A Well, the planning was that Select was -- Select Enterprises was to acquire all of the stock of EMS on a basis of three shares of EMS stock for each share of Select stock based on the $15 per share stated value of Select stock and the $5 per share value that we had attached to EMS stock.

Q Did anything else occur at that meeting?

A I don't recall anything further at that particular meeting, other than we, at least tentatively agreed that that was the proposition that was interesting to us.

Q What if anything happened thereafter?

A Well, there were several meetings after that. During these meetings --

Q Who was present at these meetings?

A Well, for the m-ost part there was Joe and myself, Bickel and Joiner -- Jim Joiner.

THE COURT: Who is Joe?

THE WITNESS: Joe Boyd, I am sorry.

MR. SEGAL: May we have adate on the subsequent meetings.

THE COURT: If it is not brought out on direct it can be brought out on cross. I do not like to interrupt the direct examination for that kind of detail. Go ahead.

A During the course of these several subsequent meetings, several things were brought out, among them Joe Boyd indicated that he felt as though he would like to move the headquarters of Select Enterprises from Midland to Dallas and, after that, after that conversation, why Mike Bickel made arrangements for a rather large room at the Downtown Holiday Inn through a friend of his who happened to be the manager at the hotel at the time and after that much of it or many of the conferences, some of the future conferences were held there for a period of time -- I don't recall exactly how long but shortly thereafter, since Mike Bickel had an empty room in his office at 27171 Main Place he arranged for Select to use that office.

So, from that point forward, business was transacted there.

Q Was there a telephone in that office?

A Yes, there was. The telephone that was in the office was one, that particular room was previously occupied by EMS and, until moving to the small office in Fort Worth and so, therefore, the phone that was in that office carried the number that was originally the EMS number.

Q Did anything else happen in this series of

meetings that you talked about?

A Yes. One other thing occurs to me and that is that at one of these meetings, Joe Boyd asked me for a list of names of people that I knew -- friends, relatives and so o n -- that he indicated he would like to give them some shares of Select Enterprises stock.

Q Did you have any other conversations with Mr. Boyd concerning Select Enterprises stock during these meetings?

A Yes. He told me that I was the owner of 10,000 shares?

Q With respect to this list you just mentioned, did there come a time when you gave Mr. Boyd such a list?

A Yes, I did.

Q Do you recall how many people were named on it?

A There were twelve people on the list.

Q Would you look at Government Exhibit 10 in evidence in the pile there to your left and look at the second of the pages, which is dated February 19th and would you tell the jury whether any of the names on that page bear any relationship to that list?

A Yes. On the right-hand column the following names were on that list: beginning with the fourth names from the top -- Fred Haus, Ernest Brooks, W. George Anderson,

Jack L. Dunn --

MR. SEGAL: Excuse me, please. I am not following that.

You said the second page?

MR. SUSSMAN: The second page, dated February 19th.

THE COURT: Would you go on with your identification.

THE WITNESS: I think I got to W. George Anderson.

MR. SEGAL: Your Honor, I wonder if he could repeat the names for me, please?

THE WITNESS: Repeat them?

THE COURT: Yes.

THE WITNESS: Fred Haus, Ernest Brooks, W. George Anderson, Jack L. Dunn, C.R. Grow, Robert Y. Yeoman, Myron O. Bickel, Gerald Radky, Donald Trossen, Robert Chapel. Clifford Garten and Charles Gelsinger.

Q Did there come a time when you received stock certificates with respect to that list?

A Yes. But that was much later.

Q Would you look at Exhibits 21 and 21-A in the pile there by your left hand and tell us if you can identify those exhibits.

A What was your question in this regard?

Q Can you identify those exhibits?

A Yes, I can.

Q Would you tell the jury, please, what they are?

A This series --

Q What's the number on it?

A Exhibit No. 21 is a manila envelope containing several Select Enterprises stock certificates in varying denominations and they follow, as near as I can tell, the list that I just read.

Q What is 21-A?

A 21-A is what appears to be an adding machine tape with a column of figures on it totaling up to 13350 with a hardwritten figure below of 3,000.

Q And where did you first receive 21 and 21-A and from whom?

A I received them from Joe Boyd.

MR. SUSSMAN: We offer the Exhibits 21 and 21-A.

MR. SEGAL: May I have a voir dire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. SEGAL:

Q Mr. Chapel, did you receive the items in Exhibit

21 in the mail?

A I beg your pardon?

Q I say, did you receive the items in Exhibit 21 in the mail?

A No, sir. They were handed to me by Joe Boyd.

Q And as to 21-A, did you get that under separate cover?

A No, it was in the envelope with the certificates.

Q And at the time that you got it, did 21-A consist of one or two pages?

A It's a single --

Q 21-A is what I am referring to.

A This is 21-A.

Q So it's a single sheet?

A Yes.

Q Now, the handwriting that appears on 21-A, is that your handwriting?

A No, sir.

Q Do you know whose it is?

A No, I don't.

MR. SEGAL: Your Honor, I would object to 210A as far as the handwriting is concerned.

THE COURT: We will eliminate the handwriting.

MR. SEGAL: With that excision then I would

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have no objection.

THE COURT: There is handwriting on both sides of this tape.

Would you look at each and see if you can identify either.

THE WITNESS: No, your Honor, I cannot identify either one.

THE COURT: All right.

Then what we will do is to have the column xeroxed with the handwritten matter left off the redacted copy of Exhibit 21-A. Otherwise, it is received.

(Government Exhibit 21 and 21-A received in evidence)

BY MR. SUSSMAN:

Q Now, Dr. Chapel, after you gave Mr. Boyd this list of twelve that we were talking about, what if anything happened next with respect to Select Enterprises?

A I believe that this, as my memory serves me, this brings us up to on or about the 20th of February and at that time Joe Boyd and I and Mike Bickel made an automobile trip to the bank in Atoka, Oklahoma.

Q Would you tell us the name of the bank and what, if anything, you did there?

A It's the Atoka Bank and we went there and we met

with its president, Mr. Howard Brookshire and for most of the time that we were there, Mr. Bickel and I were in the anteroom, I guess you would call it, the lobby of the bank, while Mr. Boyd and Mr. Brookshire were in Mr. Brookshire's office and I don't recall any other events that took place, actually, on that visit to the Atoka Bank.

Q What if anything happened after you left the Atoka Bank?

A We drove back to Dallas and it was either on that same afternoon or the next day that there was another conference at which -- and this conference incidentally, to the best of my recollection, was in the room at the Holiday Inn and at that meeting with Mr. Boyd, myself, Bickel -- Mike Bickel -- and Jim Joiner -- and during this particular meeting, I was handed ten 1,000 share certificates of Select Enterprises stock made out in my name, and these were given to me.

I examined them and Mr. Boyd asked me to execute stock powers for these stocks which I did and then three of these stocks were given to Mr. Bickel and myself to be used as an additional collateral, two of them, that is -- to be used as additional collateral on a loan that we already had at the Texas Bank and Trust Company --

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Q Let me stop you there and ask you to look at Exhibits 270 and 271 and tell the jury whether you can identify those two exhibits.

A Exhibits 270 is one share of Select Enterprises stock made out in my name and it's stock power and this would be the certificate that was pledged at --

THE COURT: This is one share or --

THE WITNESS: 1,000 shares. I am sorry.

A 1,000 shares of Select stock and this one subsequently at that meeting --

Q Which was this one that you just referred to?

A I am sorry. No. 270, Exhibit 270 --

Q What's the other exhibit?

A The other exhibit is Exhibit 271 and it consists of two 1,000 share certificates of Select stock and their accompanying powers, both made out to me.

Q What, if anything, happened to the remaining seven certificates that you mentioned?

A The remaining seven certificates of 1,000 shares each were kept by Joe Boyd.

MR. SUSSMAN: The government offers Exhibit 270 and 271.

THE COURT: Received.

(Government Exhibit 270 and 271 received

in evidence)

Q Dr. Chapel, did anything else happen at this meeting that you just talked about?

A I missed the last part of the question.

Q I beg your pardon.

Did anything else happen, at this meeting that you have just talked about, with the stock certificate?

A I don't recall anything further at this particular meeting.

Q Would you look, please, at Exhibit 298 and tell us if you can identify the signature in the lower right-hand corner of that exhibit.

A The signature is Myron Bickel and --

Q Is that the same person that you have been talking about as Michael Bickel?

A Yes, it is.

And I recognize that as his signature.

Q Now, would you please take Government Exhibit 272 and tell the jury if you can identify Government Exhibit 272.

If so, tell them what it is.

A Yes. Exhibit 272 is a no-e made out for $15,400 to the Texas Bank and Trust Company of Dallas, Myron O. Bickel and myself.

Q Do you recognize the signatures?

A Yes, both of them. Mine and Mr. Bickels.

Q Would you also look at Exhibits 273, 274, 194 and tell the jury if you can identify those.

A Okay. Exhibit No. 273 is a security agreement pledge, also Texas Bank and Trust Company --

Q Let me short circuit this.

Do you recognize the signatures on them?

A Yes.

Q Whose are they?

A Mine and Myron Bickels.

Q How about 274? Do you recognize the signatures on that?

A Yes. They are the same signatures, mine and Myron Bickels.

Q Would you please take Exhibits 271, 272, 274 and 194 and describe to the jury the transactions to which they relate.

A I don't seem to have 271.

MR. SUSSMAN: It may be with the jury.

I hand you 271, sir.

A Okay. These exhibits, 271, 272, 273 and 274 and 194 represent the various documents coincident with a loan that we had at that time at the Texas Bank and Trust Company.

Q That's a $15,400 loan?

A Right.

Q What is the role of Exhibit 194 in that loan?

MR. SEGAL: Objection.

THE COURT: What, if any.

MR. SUSSMAN: Sorry.

Q What if any role did Exhibit 194 have in that loan?

A This 194 is a stock certificate for 50,000 shares of United American Industries stock in the name of M.S. Knisely and this stock was pledged as additional collateral against that note.

MR. SUSSMAN: Your Honor, the government offers Exhibits 271, 272, 273, 274 and 194.

MR. EHRLICH: Your Honor, I would like to object to 274 and I will hand this communication to the Court, please.

THE COURT: Yes.

MR. EHRLICH: I also would object to 194 as being outside of the period of indictment.

THE COURT: Both objections are overruled.

The note that you sent me is marked Court's Exhibit 9.

(Court's Exhibit 9 marked)

Q Dr. Chapel, tell the jury, please, what if anything happened next after that bank loan?

A I think the next happening in the series of events at this point was that at this point Mr. Bickel and I began to prepare Economic Management Services for the final closing of the trade that was to have been made.

Q Would you look at Government Exhibit 275 and tell the jury if you can identify that document and if so what it is.

I direct you particularly to the two yellow sheets.

A The two yellow pages of this exhibit, Exhibit No. 275, are a listing of the stock -- the first page of it is a listing of the stockholders of Economic Management Services, showing their certificate numbers, the quantity of shares that they had and their names.

Q What is the second yellow page?

A The second yellow page is a list of the same names, with one exception, I believe; yes -- a list of all of the names except the one name, Clay Salyer. And the column of figures represents a calculation of the number of Select Enterprises stock shares that each of these people would receive when the transaction was complete.

Q Do you know when those two yellow pages were

prepared and who prepared them?

A Yes. I don't believe that I can call an exact date. I am sorry to say that but they would have been prepared very close after these certificates were pledged at the Taxas Bank as collateral.

MR. SEGAL: Objection, your Honor. I don't follow that, about the certificates being pledged.

THE COURT: If you do not follow it, then it should be cleared up by you on cross examination.

Q And this typewritten front page of that exhibit, Dr. Chapel, when was that prepared?

A That was prepared onthe date that is stated, on April 11, 1970.

MR. SUSSMAN: Your Honor, the government offers it.

THE COURT: They are received.

(Government Exhibit 275 received in evidence)

THE COURT: The jury is excused until 10:00 o'clock.

(Adjournment taken to October 3, 1975 at 10:00 o'clock)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Joseph Azzarone (Resumed)		540	571	
Francine Zahl	573	581		
Daniel Anfang	594	600		
Bruce Bandes	612			
Michael Karfunkel	619	631		
Bernard Shwidock	651			
Paul Harrelson	657	668	679	
Christine Smith	680	711		
William C. Chapel	724			

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EXHIBIT INDEX

Government	Identification	In Evidence
1-D		599
77 through 93, 52		667
72		684
9,44,44-B,45		686
6-C		687
75,183		692
72		696
21, 21-A		735
270,271		737
275		742
Court		
5	654	
6, 7	680	
	740	

pgs

UNITED STATES OF AMERICA

vs.

JOE TRUMAN BOYD, et al.

New York, October 3, 1975;
10.25 o'clock a. m.

(Trial resumed.)

- -

(Jury in box.)

W I L L I A M C. C H A P E L , resumed.

DIRECT EXAMINATION (Continued)

BY MR. SUSSMAN:

Q We left off yesterday, Dr. Chapel, with you just having finished tesifying concerning Government Exhibit 275, these two particular pieces of yellow paper, part of that exhibit.

Can you tell us what happened next relating to Select Enterprises after those two pieces of yellow paper were prepared?

A The next event that I recall is that Mr. Bickel, Mike Bickel, my associate, and I took a financial statement of Select Enterprises to the Texas Bank & Trust Company.

Q Would you take Government Exhibit 2-I from

that file and identify it.

A This is the financial statement which was taken to the Texas Bank.

MR. SUSSMAN: We offer the exhibit, your Honor.

(Government's Exhibit 2-I was received in evidence.)

xx Q What happened next with respect to Select Enterprises?

A I believe that the next thing in the sequence of events was that I was asked to arrange for my secretary in Fort Worth to pick up a package of documents from the Securities and Exchange office.

Q Who asked you?

A Joe Boyd.

Q Would you please tell the jury what happened with respect to that request after it was made?

A I picked up my secretary, Jean Radtke, and drove her to the Securities and Exchange Commission. She went in the building, picked up the package; she was carrying a letter signed by Mr. Weber, Selwyn Weber, authorizing her to pick it up, and she, while there, gave the Securities and Exchange Commission a receipt; she came back to the car and brought the package and I dropped her off.

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Q Look at Government Exhibit 53 and tell us if you can identify that?

A This is a letter authorizing the pickup of these documents signed by Mr. Weber, and the handwritten receipt by Jean Radtke.

Q Do you recognize her handwriting?

A Yes.

MR. SUSSMAN: We offer the exhibit.

(Government's Exhibit 53 was received in evidence.)

xx

Q Can you tell us approximately when it was that you drove Mrs. Radtke to the Securities and Exchange Commission for the purpose you described? Give us the date.

A It would be, as best as I can recall, in late February of 1970.

Q What happened thereafter, the next thing that happened with respect to this?

A The next thing that I recall was that in the course of several almost daily meetings that we were having with Mr. Bickel and Mr. Boyd and myself, discussions were entered into about insurance policies and the lives of Joe Boyd and Jim Joiner, primarily with Mr. Bickel who was an insurance agent.

Q Tell us the substance of those conversations on that subject that you yourself had?

A The only recollection that I have of my particular involvement in that had to do with discussions relative to the possibility of purchasing life insurance policies on Boyd and Joiner, and I believe that, as I recall, the suggestion was made that this be done -- at least it was introduced to me by Mr. Boyd, I believe, Joe Boyd.

I, in turn, contacted Bickel and he came into the conversation and that's all that I know about.

Q Would you look at Government Exhibit 281-A and tell the jury if you can identify the signature which appear at the bottom?

A Yes. On the third page I can identify the signature of Mike Bickel.

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Q Any on the second page?

A Joe Boyd and M.S. Knisely.

Q You recognize those handwritings, do you?

A Yes.

Q On the second page?

A The second page, M.O. Bickel, I recognize that. I also recognize M.S. Knisely. I am not familiar with the others.

Q Would you tell the jury, please, what happened next after the signing of those documents which are Exhibit 281-A for identification?

A The next event that I recall was that in the process of preparing EMS for trade with Select, I, with the help of Mr. Bickel, drew up an agreement, a proposed agreement, for this switch, or trade.

Q Would you take up Exhibit 282 and tell the jury if you can identify that document?

A Yes, I can.

Q What is it?

A This is the agreement that was drawn up as a proposed agreement.

Q Between you and Bickel?

A Right.

MR. SUSSMAN: We offer it.

(Government Exhibit 282 for identification was received in evidence)

Q Dr. Chapel, would you please look at page 2 of Government Exhibit 282 in evidence, in the middle of the page, beyond where it says "purchase price." The statement is made that there is an Exhibit A to that agreement.

Would you tell the jury what that Exhibit A was?

A Exhibit A was a letter which we prepared which outlined what we described as the future potential of EMS.

Q Would you look at Government Exhibit 283 and identify that document, if you can?

A Yes. This is the letter which was prepared that is mentioned in 282.

Q At the bottom of the same page of 282 that you were looking at there is reference to an Exhibit B.

Can you tell the jury, please, what that Exhibit B was?

A Oh, that is a letter from an attorney, Mr. Benker, and it is a description of the --

Q Without describing what is in the letter, can you identify the exhibit?

A Yes. This is the letter on the letterhead of Chandler and Kerr, attorneys.

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Q And that is Exhibit B, is it?

A Yes.

MR. SUSSMAN: We offer 283 and 284 in evidence.

(Government Exhibit 283 and 284 received in evidence)

Q Now, Dr. Chapel, referring you again to page 2 of Exhibit 282, you will see that it says the purchase price is $230,000. That was the purchase price for what?

A I'm sorry. The purchase price for what, did you say?

Q What was going to be purchased for $230,000?

A All of the stock, that is, the outstanding stock, of Economic Management Services.

Q And if you will now look at Exhibit 283 and the last paragraph on the last page of that document, you will also see the figure $230,000.

Is there any relationship between those two figures of $230,000?

MR. SEGAL: Objection.

THE COURT: The objection is overruled.

A Yes, there is a relationship.

Q What is that relationship?

A The figure in 282 is arrived at by taking the figure on -- may I refer to this other exhibit which we were talking about?

Q Certainly.

A This list, the yellow pages list, which outlines the number of shares of Select Enterprises that it would require to trade on a three for one basis with the EMS stockholders, totals out to 15,333 shares.

15,333 shares multiplied by the $15 per share price comes up to 230,000, $232,000 figure.

And this figure in turn was used in Exhibit 282 in order to --

MR. SEGAL: Objection.

THE COURT: Used by whom?

THE WITNESS: By me and Mr. Bickel.

THE COURT: You may complete your answer.

A (Continuing) -- in order to work back from there to draw out a proposed future forecast for EMS.

Q Now, if you will look at pages 2 and 3 of Exhibit 283, and in particular to paragraphs 3 and 4 of that exhibit which appear on those pages, you will see some computations.

Can you tell the jury what, if any, relationship those computations have to the $230,000 figure?

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MR. SEGAL: Your Honor, I would object to the word "design." I think the witness is testifying --

THE COURT: All right.

Just do not use the word "design." Let's get a more factual and less conclusory reference, if there is one.

THE WITNESS: Okay.

Q Proceed.

A I beg your pardon?

Q Go ahead with your answer.

A Well, if I can describe this clearly, the figure of $230,000, in order to justify that figure we, Mr. Bickel and I, started out by describing the potential of EMS over a period of two years, and we put these figures on paper in order to total up to that final end result justifying the $15 a share, $230,000 purchase price.

Q What was the next thing that happened with respect to Select Enterprises, Dr. Chapel?

A The next thing was --

Q After the completion of these exhibits you have just been talking about.

A Oh. The next thing that happened was that Joe Boyd asked me to go to the Atoka Bank in Atoka, Oklahoma with him and sign the note.

Q Look at Government Exhibit 286 for identification and tell the jury if you can identify that document.

A Yes I can. It is a note on the First National Bank of Atoka signed by me.

Q That is the note you just referred to?

A Yes.

MR. SUSSMAN: We offer it.

THE COURT: Atoka is A-t-o-k-a?

THE WITNESS: Yes, your HOnor.

THE COURT: Where is that located?

THE WITNESS: It is in southeastern Oklahoma.

Q How far is it from Dallas?

A I don't recall exactly, but it is approximately 100 miles, I think.

(Government Exhibit 286 for identification was received in evidence)

Q Did you have any conversation with Mr. Boyd with respect to the signing of Exhibit 286?

A Yes.

Q Tell the jury what that conversation was, please.

A The conversation was that he wanted me to sign this note at the bank. He indicated, or he said, told me, that it could save Select Enterprises and that the

reason that he didn't sign it himself was that he was up to his loan limit at the bank.

Q Did you have occasion to sign any other document while you were at the Atoka Bank?

A I did present a financial statement. However, this was not actually signed at the Atoka Bank, as I recall.

MR. SEGAL: I'm sorry. I didn't hear that.

THE WITNESS: I said I did present a financial statement, but I don't recall that I actually signed it right at the bank.

Q Will you look at Exhibit 269 for identification and tell us if you can identify that document? If so, tell us what it is.

A Yes. It is a personal financial statement in my name, signed by me.

Q Is that the financial statement you just referred to?

A Yes, it is.

Q Would you look at the back part of that and tell us if it refers to Select Enterprises?

A Yes, it does.

MR. SUSSMAN: We offer it.

MR. SEGAL: May I have a brief voir dire on

this, your Honor?

THE COURT: Yes, certainly.

VOIR DIRE EXAMINATION

BY MR. SEGAL:

Q Dr. Chapel, was Exhibit 269, the personal financial statement, submitted in order to obtain the loan indicated by the note in Exhibit 286?

A I'm not sure that it was submitted in order to obtain the loan but, rather, submitted in order to support the loan.

Q But was this 269, this Exhibit 269, submitted at or about the same time as 286, Exhibit 286, was signed?

A Yes, to the best of my recollection.

MR. SEGAL: No objection.

(Government Exhibit 269 for identification was received in evidence)

BY MR. SUSSMAN:

Q Dr. Chapel, if you will look at the reverse side of that Exhibit 269, there is an entry called "Other stocks and bonds," and under that entry there is a line which says "10,000 Select Ent., Inc., W.C. Chapel, $150,000 cost, present market value $160,000."

Did anybody tell you to put that information in?

MR. SEGAL: Objection.

THE COURT: He may answer the question yes or no.

A Yes.

Q Who told you?

A Joe Boyd.

Q What happened next with respect to Select Enterprises after the note?

A Let's see. Shortly after that we received -- we again referring to Mr. Bickel and myself -- another financial statement from Select Enterprises.

Q Did anything happen before you received that financial statement?

A Let me think just a moment.

My memory escapes me as to this sequence here at this point.

(Pause)

I'm sorry. I have a sort of a mental blackout here suddenly.

Q Did you go anywhere before you received that financial statement?

A Oh, yes, yes, certainly. At that point --

Q Where did you go and who were you with?

A At that point I went to Abilene, Texas for a

meeting of the board of directors of Select.

Q Tell us who was there and where it took place.

A The meeting took place in the office of Mr. Robert Ford, an attorney, and at the meeting were myself, Mr. Boyd, Dr. Knisely, Mr. Ford, Selwyn Weber, Dr. Halvord Hensen, Ed Goodloe, Mr. Barnett. Those are all I recall.

Q Do you see Mr. Ford in the courtroom?

A Yes, I do.

Q Point him out, please.

A He is the gentleman in the gray suit --

MR. GOLDMAN: Identification conceded, your Honor.

Q Do you see Dr. Knisely in the courtroom?

A Yes. Dr. Knisely is over at the right, my right.

Q My extreme left?

A Yes.

Q Do you see Mr. Weber in the courtroom?

A Yes. This is Mr. Weber here in the blue suit.

Q Do you see Mr. Barnett in the courtroom?

A I'm not able to recognize Mr. Barnett. I only met him one time.

Q Do you see Mr. Goodloe in the courtroom?

A I'm also not able to recognize Mr. Goodloe.

Q Would you tell us, please, when this meeting began, how long it lasted, what happened at it?

A Well, the total meeting began, as I recall, in what is best described, I suppose, as early evening, around the dinner hour.

As I recall, when we arrived there, it was still light. And the meeting began as soon as everybody got there.

And a description was given of all of the --

Q You say a description was given. Who gave it?

A Well, may I put it this way? Each of the assets of Select was described by a different person, and I don't recall which was described by whom.

Q Would you tell us, please, what assets were described?

A There was discussion of oil properties.

Q What was said about that?

A Their location was described -- and I don't recall the location because I was not familiar with the country even then. Its potential -- the oil properties' potential was described, potential income.

Then the mica mine was described along with its future potential and information relative to how much mica could be taken from it, as I recall.

Q Do you remember whether it was stated where that mica mine was?

A Yes. That mica mine was in New Mexico.

Q Go on.

A Then there was a description of an office building in Midland, Texas, and also information was given relative to the income of the office building.

Q What information was given?

A I don't recall the exact details, but there were figures given as to gross and net income.

Q Go on.

A Then also a description was given of some land in California which was there -- I don't remember the name

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of the valley, but it is in Southern California --and a description was given of that land and its value was stated.

That's about all I can recall of the descriptions of these various pieces of property.

I described the Economic Management Services.

Q What, if anything else, happened at that meeting?

A After the meeting itself, what I considered to be the actual board of directors' meeting was concluded, then some of those in atrendance -- not all, and I don't recall all of the names -- but some of those in attendance went to work separately. I was excused from the room and they continued to work for a long time.

Q Did any of them ever tell you what they worked at?

A I was told they were preparing --

MR. KRIEGER: I object to that, your Honor. Narrative hearsay.

THE COURT: We will pass that.

Q What was the next thing that happened after that?

A The next thing was back in Dallas when I received a copy of a new financial statement; that is,

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by "new" I mean to replace the one that we discussed earlier.

MR. SEGAL: Your Honor, may we have a date on this?

Q When did this happen, Dr. Chapel?

A The Abilene meeting was, as I recall, in late March. I also seem to recall it was either on a Thursday or Friday. I seem to recall Thursday.

The episode of receiving the new financial statement was, to the best of my recollection, the following Monday, which would place it either late February or early March.

Q By what means did you receive it?

A Just a moment. I am confused on those dates. Late March or early April.

Q By what means did you receive this?

A Joe Bo[illegible] gave it to me in the 1 Main Place Building.

Q Did you do anything with it?

A Yes. We took a copy of it to the Texas Bank & Trust Company.

Q Would you take Government Exhibit 3-N from the pile there and tell the jury if you can identify that document?

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A Yes. This is a copy of the financial statement that was taken to the Texas Bank.

MR. SUSSMAN: We offer that.

(Government's Exhibit 3-N was received in evidence.)

xx Q Dr. Chapel, in that week in which you received Exhibit 3-N, did you have occasion to do anything else with respect to Select Enterprises?

A Yes. I prepared a stockholders' newsletter for Select Enterprises.

Q Can you tell us how you prepared that letter from the time it first came to your attention until the time you completed it?

A In the early part of the week, as I recall, on this particular week following the Abilene meeting, Joe Boyd told me that we needed to have, or he needed to have, a newsletter to send out to the stockholders of Select. He described to me what the newsletter should contain essentially, and I proceeded to work out a rough copy which was later shown to Joe Boyd, and he made further suggestions as to changes in the final form and subsequently the final copy of it was typed.

Q Would you look at Government Exhibit 4-A, please, and tell the jury if you can identify that document?

A Yes. This is the newsletter that was done.

MR. SUSSMAN: We offer that, your Honor.

(Government's Exhibit 4-A was received in evidence.)

xx MR. SUSSMAN: Your Honor, I am going to give Dr. Chapel another copy. in fact, the copy is 4-B for identification. It is a copy of that exhibit. The text is the same. I represent that so that I can ask him about it while the jury has it.

THE COURT: I will give him my copy.

MR. SUSSMAN: No, your Honor. I will give him my copy of 4-A.

BY MR. SUSSMAN:

Q Dr. Chapel, would you please, looking at the copy of 4-A in evidence that you have before you, go through it paragraph by paragraph and state briefly the source of the information in each of the paragraphs?

A Essentially the wording in the first paragraph is mine.

Q And the next one?

A As is the next one.

THE COURT: Go through these so your testimony can be meaningful for those who are listening. After you have identified the source, please read the statement that

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you have identified.

THE WITNESS: The entire paragraph?

THE COURT: Yes, so we will all understand what it is that you have identified. First state the source and then read the paragraph.

A Well, the wording of the first paragraph is mine.

"The time has come for you as a stockholder in Select Enterprises, Inc. to begin to share in some of the excitement and enthusiasm as well as the feeling of confidence and solidarity that has been generated in the minds and hearts of your Board of Directors over these past few weeks of intensive organizational activity. This feeling radiates to all who have been in a position of being able to view fully and firsthand the progress made in so short a time. For this reason, this letter is being sent to all of you that you may be made an integral part of the prgress, and feel as we your officers and Board of Directors do, that Select Enterprises, Inc. has truly set the pattern for perpetual progress."

The next paragraph is also my wording:

"As a stockholder, you can confidently take

assurance in the fact that Select Enterprises has faced the tests of sound business and economic thought and has not been found wanting."

Q Give us the source of your information in the next paragraph after you have read that paragraph?

A The next paragraph, the source of the information is Joe Boyd. Now I will read the paragraph:

"Select Enteprises began its program of acquisition of properties by laying down first a firm, workable, yet simple series of criteria by which to judge each potential property prior to any further consideration. First, the property should be fully debt free; Second, it should be currently producing substantial income, or possess inherent tangible value; and third, it must have an attractive potential for future growth under sound management and adequate financial. These criteria, more particularly the first, were felt necessary in today's economy, since it seemed far more in the interest of the stockholders to insist upon a debt-free status, and reflect the earnings to the stockholders than to be paying out profits in the form of today's high interest rates."

Q And the next paragraph?

A The next paragraph, again this information was given to me by Joe Boyd:

"Among those Select Enterprises which have met and passed this test are such holdings as producing mica mines in New Mexico, producing oil and gas properties in Comanche County, Texas, commercial and residential development properties in Midland, Texas, and agricultural properties in the famed Imperial Valley of California."

Q Go on to the next paragraph?

A The next paragraph, again the information was supplied by Joe Boyd:

"In addition, numerous other potentially valuable acquisitions are in varying stages of consideration for participation in the rapidly growing family of Select enterprises, such as ranch lands, hotel properties, manufacturing interests, resort properties, a Fort Worth-Dallas based management consulting firm, and many more holdings of highly diverse nature."

Q Let me stop you there and ask you if you know what company was referred to as the Fort Worth-Dallas based management consulting firm?

A That would be EMS.

Q Your company?

A Right.

Q Go on to the next paragraph?

A The next paragraph, again the information was supplied to me by Joe Boyd.

"All of this has accrued to the current Select Enterprises financial stawtement showing some $49 million in assets and no liabilities. Of course, only those properties actually a part of Select's family at this writing are reflected in the above statement."

The next paragraph is also information given to me by Joe Boyd.

"The mica mines in New Mexico have been fully owned by SEI for some time, and are now actually producing substantial commercial quantities of this valuable mineral. In recent weeks improvement have been made at the mine site. Improvements have been made in the processing facilities, and several new and additional pieces of equipment have been added to further enhance the productivity of this property."

The next paragraph is also supplied by Joe Boyd:

"The oil and gas holdings located in Comanche County, Texas are likewise enjoying current productive status. One well is being pumped successfully at this time and preparations are underway for drilling of 23 more. The field itself is well established geologically as a sound area for this project. Reputable geologists have studied this field and their reports indicate that this particular holding is of great potential for the near future as well as on a long range forecast basis."

The next paragraph is information provided by Joe Boyd:

"Located in the West Texas City of Midland, Select Enterprises has acquired substantial holdings in both commercial and residential properties. Some of this property is developed, and some is in varying degrees of development. Architectural firms have completed preliminary plans for total development and the vision of the future for this enterprise is most encouraging."

The next paragraph, information also supplied by Joe Boyd:

"One of the more recent acquisitions brings to Select Enterprises a truly great potential. This excit-

ing event is the securing of approximately 93,000 acres of land located in the well-known Imperial Valley of California. The Imperial Valley has been considered among the richest and most productive land anywhere in the world. Careful development of this holding can generate a large potential profit to Select Enterprises and its stockholders, and can also prove to be a great benefit to the Imperial Valley and its surrounding ancillary enterprises."

Q Go on to the next paragraph.

A The next paragraph, this information is relative to EMS and I supplied this information:

"One of the more potentially profitable of the enterprises under consideration for acquisition is a Dallas-Fort Worth based firm known as Economic Management Services, Inc. This firm is currently engaged in management consulting for professional people through training seminars, and through individual consulting contracts. A recent field test indicates that this firm is capable of generating a cash flow conservatively in excess of one-quarter million dollars in the next two years with an extremely modest expenditure. They have currently scheduled seminars in many states including Oklahoma, Texas, Indiana, Minnesota, California, Montana, and

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others."

Q Let me stop you there. I refer you to the portion of this paragraph which relates to a cash flow conservatively in excess of one-quarter million dollars in the next two years with an extremely modest expenditure. Does that cash flow have any relationship to the $230,000 figure you were talking about earlier?

MR. SEGAL: Objection.

THE COURT: Well, whether he asked that question or what if any relationship has that inforamtion to the $230,000, I would allow that. I think the question is the same.

You may answer.

(Record read.)

A Yes, it does.

Q Would you describe for the jury what this relationship is?

A Well, the figure of $230,000 which we described on a previous exhibit where we were drawing out the proposed future of EMS, yes, that figure was the figure that prompted the words "a million dollars" in this particular exhibit.

Q Was Economic Management Services debt free at the time of this writing?

A No, it was not.

Q Please describe what its financial condition was?

A Well, actually, it was in very bad financial condition.

Q Instead of characterizing it, describe it. Say what loans it had, if any?

A We had loans at the Texas Bank & Trust Company; we had a loan, a large loan, $15,000, as I recall it, at the Texas Bank & Trust Company; we had a smaller loan -- I don't remember the name -- at the Citizens Bank of Princeton, Texas.

Q Had Economic Management Services any net income in the year 1970?

A Net income? No.

Q Had it had any loss in --

MR. SEGAL: Your Honor, I'm sorry. I object to this. I think that we are getting someth ing that is conclusory, which has no bearing on that which is stated in this exhibit which is being read.

THE COURT: The jury will decide whether it has any bearing in the light of the statement that says that one of the more potentially profitable enterprises and so on.

You may continue stating what this enterprise revealed with respect to its finances.

THE WITNESS: Would you mind restating the question?

Q Had it had any loss in 1970?

A Yes.

Q Can you approximate the amount of that loss?

A I'm afraid I can't. I don't have any basis for that.

Q When was Economic Management Services found dead?

A It was in January of 1969.

Q Had Economic Management Services any net income in the year 1969?

A For the total year, no.

Q How large was the loss that year?

A I don't even recall that figure.

Q It was approximately --

A It was substantial and resulted in our having to make these loans. I would estimate that the loss would probably have run --

MR. SEGAL: Objection, your Honor.

THE COURT: We can't take probabilities.

THE WITNESS: I'm sorry.

THE COURT: It was not making money?

THE WITNESS: No, sir, it was not.

THE COURT: It was losing money?

THE WITNESS: Yes, your Honor.

Q Had it ever made money?

A Not a profit, no.

Q Go on to the next paragraph.

THE COURT: Did it have any assets?

THE WITNESS: Very minor, your Honor.

THE COURT: What did the assets consist of besides the furniture and fixtures?

THE WITNESS: That's it. That would be all.

THE COURT: It just had an office somewhere with some furniture in it; that composed the assets?

THE WITNESS: Those are the assets.

THE COURT: You wrote that that was one of the more potentially profitable enterprises?

THE WITNESS: Correct.

THE COURT: Go ahead.

BY MR. SUSSMAN:

Q Go to the next paragraph.

A. The next paragraph was information which, again was supplied to me by Joe Boyd:

"Offices of Select Enterprises, Inc., which

is a Nevada corporation, are located in Midland, Texas and in Dallas, Texas."

Q Go on.

A The next paragraph, information supplied by Joe Boyd:

"The Midland office which is currently the headquarters of the corporation is housed in the Patio Building. This building is owned by Select Enterprises. It is considered a most valuable asset, and is located in the heart of Midland's business district which in turn is considered the center of West Texas."

Q Go on.

A The next paragraph is -- I suppose I would have to say that both Mr. Joe Boyd and myself supplied this because this was being done in this office:

"The Dallas office is located in the new '1 Main Place' complex in downtown Dallas, hub of the Southwest's financial world."

Q The next paragraph.

A The next paragraph came from Joe Boyd:

"Plans are now underway to switch the headquarters of Select Enterprises to the Dallas office in order to expedite the financial and developmental

aspects of the future growth of SEI."

Q Go on.

A The next paragraph is my wording:

"With the foregoing in mind, we the officers and board of directors of SEI feel that you will readily recognize the outstanding possibilities and potential existing through the vigoror and enthusiastic management policies of this unique organization."

The next paragraph was supplied by Joe Boyd:

"Subsequent releases such as this will be prepared for you the stockholder in Select Enterprises, Inc. periodically each 30 to 45 days in order to keep you abreast of the rapid fire progress of this progressive and aggressive corporation. Sincerely yours for the officers and board of directors, M. S. Knisely, president, Select Enterprises, Inc."

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Q Is the copy of the exhibit which you have signed in any name?

A Yes, it is.

Q Do you recognize the signature?

A It has the signature of M.S. Knisely, and in this instance I can't be absolutely certain of recognizing the signature.

Q In the course of preparing Exhibit 4-A, did you have occasion to work late any night?

A Yes. As a matter of fact, in one particular instance during that week that we were working on this I did work very late and therefore stayed in Dallas.

Q Will you look at Exhibit 289 and tell us if you can identify that document, please?

A Yes. 289 is a motel bill from the Holiday Inn for one night's lodging, where I stayed.

MR. SUSSMAN: We offer that exhibit.

MR. SEGAL: Objection, your Honor.

THE COURT: What difference does it make whether he stayed late?

Sustained.

Q Can you tell us what happened with that news release, 4-A in evidence, after you finished preparing it?

A To the very best of my recollection, after it

was completed in its final form, a limited number of copies were made -- by "limited" I mean probably -- not "probably", but not over fifty copies -- let me change that: not over twenty-five copies were made at a rapid print shop, and then later on, and I don't recall how much later on, additional copies were made in larger quantity, and I don't recall the quantity.

Q Did you ever have occasion to give a copy of that news release to anybody?

A Yes. We gave one, Mr. Bickel and I gave one, to the Texas bank.

Q Will you look at Exhibit 4-F, please, and tell us whether you can identify that?

A Yes. 4-F is a copy of the news letter as well as a copy of a March 28th financial statement for Select, and these would be the documents given to the Texas bank.

Q By you?

A By Mr. Bickel and myself.

MR. SUSSMAN: We offer 4-F.

MR. SEGAL: Objection, your Honor. I don't know whether we have an answer. The question was, was that by you, and "by Mr. Bickel and myself" was the answer to that question.

THE COURT: What do you want him to do, to

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reply specifically?

MR. SEGAL: Yes, your Honor, to the question.

THE COURT: What is the answer specifically? What is your best recollection as to who gave it to whom?

THE WITNESS: Mr. Bickel and I went together to the bank officer and gave him these documents.

THE COURT: In other words, one or the other of you had the document and you were both together at the time when the officer received the document from one or the other?

THE WITNESS: Yes, your Honor.

THE COURT: And it is Exhibit 4-F. All right. Received.

(Government Exhibit 4-F for identification was received in evidence)

Q Dr. Chapel, do you know James Joiner?

A Yes, sir.

Q Did Mr. Joiner ever say anything to you with respect to that newsletter?

MR. STOKAMER: Excuse me, your Honor. I did not hear the question.

THE COURT: Did he say anything to him about it.

Go ahead.

A Yes, he did. He made the comment that "somebody is going to get in trouble over this."

MR. KRIEGER: I object to that and move that it be stricken, if the Court please.

THE COURT: It is received as against the Defendant Joiner.

Q Would you look at Exhibit 4-G --

MR. KRIEGER: Joiner is not on trial, if the Court please.

THE COURT: He is a co-conspirator.

MR. KRIEGER: I would press my objection.

THE COURT: This is a statement of a co-conspirator, allegedly.

MR. KRIEGER: But not binding against the defendants on trial, if the Court please.

THE COURT: Depending on what the proof is. It may be or it may not be. I don't know. It is subject to connection by the proof of a conspiracy, if any.

MR. RHODES: In connection with the Court's statement, I would ask the Court to advise the jury as to Mr. Joiner's status in this trial.

THE COURT: I will do that at the appropriate time in my charge, if any.

Q Let me ask you two more questions about this

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statement by Mr. Joiner, Dr. Chapel.

Can you tell us when and where it was made?

A Insofar as I can recall, it was made in the office in One Main Place on the occasion of his receiving and reading the first copy of it.

Q And when was that?

A It would have been at the end of the week that it was prepared.

Q March or April 1970?

A Yes.

Q Would you now look, please, at Exhibits 4-G and 4-H, and in particular to the labels that appear on the front of those documents; and tell us if you can identify the typing which appears on those labels as having come from the typewriter with which you are familiar.

MR. SEGAL: Objection, your Honor. This witness hasn't been qualified for this kind of testimony.

THE COURT: Qualify him to the extent, if any, necessary to answer the question that you asked him.

Q Do you recognize the typewriting that appears there, Dr. Chapel?

THE COURT: Yes or no.

Q Yes or no, please.

A Yes.

Q Can you tell us what typewriter it came from?

A This type of typewriter was one that Mr. Bickel had in his offices at One Main Place.

Q What happened next, Dr. Chapel, with respect to Select Enterprises after the preparation of this news release?

A I am trying to establish the dates involved.

(Pause)

Subsequent to the preparation of this newsletter, a document with similar copy in it was prepared as a piece of literature.

Q Who prepared it, if you know?

A I did.

Q Would you look at Government Exhibit 5 and tell us if you can identify that document?

A Yes. That is a copy of the piece of literature that was prepared.

MR. SUSSMAN: We offer it.

MR. SEGAL: Objection, your Honor. There is no basis for introducing this document.

THE COURT: What do you say were the circumstance of the preparation of Exhibit 5?

THE WITNESS: Your Honor, I took the information from the newsletter and had it set in type by a printer,

and there are some additions to the copy, and that was then subsequently printed.

THE COURT: What was the source of the additions? And what were those additions?

THE WITNESS: If I could have the document, please.

THE COURT: Yes.

(Handing)

(Pause)

THE WITNESS: On the inside of the folded piece, the large paragraph on the right-hand side indicates that there are liabilities of $650 now, whereas the original newsletter said, as I recall, no liabilities.

And then on the panel on the back, under the heading of "Officers," all of this material has been added. And on the bottom, under "Consultants," that has also be added.

THE COURT: Was this document distributed to anybody?

THE WITNESS: I don't recall, your Honor, what was done with it after its printing.

MR. SUSSMAN: I would represent to the Court that it was distributed.

THE COURT: In other words, you are asking me

to receive it subject to proof of distribution?

MR. SUSSMAN: Yes.

THE COURT: Received.

(Government Exhibit 5 for identification was received in evidence)

Q Will you describe for the jury, please, Dr. Chapel, the preparation of Exhibit 5, briefly, from the time you began it until the time you completed it?

A Joe Boyd expressed to me that after the preparation of the newsletter that we discussed earlier that he would like to have a peice of literature describing Select Enterprises.

So I took the newsletter and used the basic wording from the newsletter and rearranged it as to its format (indicating), and took it to a printer in Dallas and had the type set rather than typewriting and ordered the printing.

Q Did you receive the finished product?

A I don't recall having received the finished product.

Q What happened next after the preparation of Exhibit 5 with respect to Select Enterprises, Dr. Chapel?

A I believe the next -- sorry. My recollection is that the next thing that happened was that Mr. Bickel

and I went to the Central Bank in Farmers Branch, Texas.

Q Had you received anything prior to going there?

A Oh, yes. As a matter of fact, I did. I received a subpoena.

Q From whom and with respect to what?

A From the Securities Exchange Commission in Fort Worth, ordering me to appear for a hearing and to bring all of the documents and books and so on in connection with EMS as well as anything that I might have in connection with Select.

Q What, if anything, did you do after receiving that subpoena?

A After I received the subpoena in the mail, I drove to Dallas, to One Main Place, and told and showed -- told Joe Boyd and Mike Bickel about having received it, and showed it to both of them.

Q Would you tell us, please, what, if any, conversation ensued?

A The conversation that followed that was Joe Boyd assured me that it was no problem and that it would be all right, everything would be okay.

And I asked for an opinion as to whether or not I should secure an attorney to go with me to the hearing. Joe Boyd didn't think that I should and Mike Bickel thought

that I should.

Q What, if anything, happened after that?

A Later on that day or possibly the following day, in a subsequent conversation with Mike Bickel, he convinced me that in fact I should take an attorney with me.

He then agreed to contact Mr. Kerr and ask him to accompany me to the hearing.

THE COURT: Is this a convenient stopping place?

MR. SUSSMAN: Yes, your Honor.

THE COURT: We will take our mid-morning recess now, ladies and gentlemen of the jury.

(The jury left the courtroom)

MR. RICHMAN: Will your Honor hear an application on your way back from the recess, before the jury comes in?

THE COURT: We can take it now.

MR. RICHMAN: I respectfully ask your Honor to direct the United States Attorney to produce Miss Paula Douglas, who has exculpatory material on behalf --

THE COURT: Who has done what?

MR. RICHMAN: Who has an affidavit submitted on behalf of defendant Titlow, or, in the alternative, if

the U.S. Attorney will consent that this sworn statement be introduced so that we may spare the expense of bringing this witness in from Reno or Tonapah, Nevada.

THE COURT: What authority have I got to direct the U.S. Attorney to produce a witness?

MR. RICHMAN: You have that authority, your Honor. It is a question of who is going to pay the expenses.

I represent an indigent defendant, your Honor.

THE COURT: But you do not claim that the U.S. Attorney has this witness under his control, do you?

MR. RICHMAN: No. But I do say that the Judge can tell the U.S. Attorney to produce them. Other judges have done it in cases of this type, Judge. It is simply telling them to pay the bill.

THE COURT: It is very important to tell me about other judges.

MR. RICHMAN: I can't tell you what happened in my own experience in these cases.

THE COURT: There is always a new experience, you know, in life.

What about this lady? Do you know anything about her?

MR. MAC DONALD: I read about it for the first time last night and I am still digesting it, and I would

like to see whether we can agree on a stipulation before we stand the expense ultimately of producing the indigent defendant.

THE COURT: All right.

(Recess)

(Jury present)

MR. SUSSMAN: Your Honor, with respect to Exhibit 289, the government would restrict its offer to the telephone number which appears on that exhibit.

We renew the offer as to that.

THE COURT: I am sorry I am missing the point. You want the telephone number?

MR. SUSSMAN: We want to have admitted in evidence just the telephone number which appears on that bill, your Honor.

THE COURT: Is it possible, Mr. Segal, to stipula that it is a telephone number of that facility? It is right under the title.

MR. SEGAL: I see. Well, your Honor, I know that I am being asked for a stipulation. I --

THE COURT: It is something that can be proved, I suppose, by getting a telephone book from the telephone company, if we want to go to that trouble.

MR. SEGAL: I will stipulate that the telephone

number of this facility, the Holiday Inn, is as it is printed.

THE COURT: Isn't that everything that you want?

MR. SUSSMAN: That is all we are asking, your Honor.

MR. SEGAL: But as to anything more --

THE COURT: That is all he wanted.

MR. SEGAL: Very well. Not quite. But, very well, I'll stipulate that that is the number, your Honor.

THE COURT: All right.

It is therefore stipulated that the telephone number of Holiday Inn Downtown Dallas, Texas is 748-9951.

MR. EHRLICH: Your Honor, on March 31, 1970.

MR. SUSSMAN: We have no problem with that, your Honor.

THE COURT: Yes, on March 31, 1970.

MR. SEGAL: Your Honor, I have a problem with that.

I was asked for a stipulation as to a telephone number. The telephone number is all I have stipulated to, not on that date.

THE COURT: All right.

Do you withdraw the date?

MR. EHRLICH: No, your Honor.

THE COURT: All right. The date is expunged. The only thing that is stipulated is the telephone number.

BY MR. SUSSMAN:

Q Dr. Chapel, would you tell the jury, please, what happened next after your conversation with Mr. Bickel concerning an attorney?

A Mr. Bickel and I went to the Central Bank in Farmers Branch and secured a loan.

Q . Farmers Branch is where, sir?

A It is a suburb of Dallas.

Q Would you look at Government Exhibit 291 and 290, on the pile in front of you, and with respect to 291 can you identify that document?

A These. These are documents relative to that loan, with my signature and Myron Bickel's signature.

Q What, if any, relationship does Exhibit 270 in evidence have to that loan?

A Exhibit 270 was pledged as security on that loan.

MR. SUSSMAN: We offer Exhibit 291, your Honor. 270 has previously been marked.

(Government Exhibit 291 for identification

was received in evidence)

Q What happened next with respect to Select Fnterprises, Dr. Chapel?

A The next thing was that I was asked, either on Friday or on the following Monday of this week, which would be, I believe, around the 17th of April -- I was asked by Joe Boyd to meet with him and Selwyn Weber at Selwyn's hotel room at the Worth Hotel in Fort Worth.

Q Go on.

A Following that, on what I remember to be Monday afternoon, the 20th of April, 1970, I went to the hotel, called the room and they told me to come up and I went upstairs and met with Joe Boyd and Selwyn Weber.

Q Was there anybody else present?

A No, sir.

Q Please tell us what happened on that occasion?

A We discussed the first part of our meeting. We discussed social chitchat, and following that Joe Boyd more or less led the conversation that took over the conversation and told me of his experiences at the hearing where he appeared before the Securities and Exchange Commission, and he assured me that everything was going to be fine and there was not going to be any problem for me to appear. He indicated that he had everything straightened out with the Securities and Exchange Commission and and that he had really put them in their place, and so assured me that everything was fine and everything was taken care of and straightened out.

Then he proceeded to tell me that my position relative to the hearing itself during the hearing should be one of being an independent businessman, the head of EMS as opposed to being a part of Select Enterprises, and he also told me that there were certain things that I should not talk about.

Q Tell us, please, what those were?

A Among those things was the list of 12 names that I had given him; the note which I signed with

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respect to the bank; my previous association with him in a company a couple of years before called Doctors' Finance Company; and the newsletter, the stockholders' newsletter.

Q Did he say anything else?

A No. That was much the substance of the conversation.

Q Did Mr. Weber say anything at all?

A No.

Q What happened next, Dr. Chapel?

A I left this meeting, and the next morning I appeared at the Securities and Exchange Commission's office where I met before the hearing with a man by the name of Howard Tigrett, who is the attorney who represented me at this hearing.

Q Did you give testimony at this hearing?

A I did.

Q In any event, was your testimony wilfully false?

A Yes.

Q Was it wilfully false as to any of the subjects Mr. Boyd had mentioned to you the night before as subjects not to talk about?

MR. SEGAL: Objection.

THE COURT: Are you objecting to the form of the

question?

MR. SEGAL: To the form, and I am objecting, your Honor, to the conclusory nature. Well, the form, because of what it is calling for.

THE COURT: Mr. Segal says you are calling for a conclusion. Suppose you reframe your question so as to call for fact if there be any.

Q What did you testify, Dr. Chapel, if you can recall with respect to Doctors" Financing?

A I denied any previous business relationship with Joe Boyd.

Q What did you testify with respect to the Atoka note?

A In answer to the question had I borrowed any money I answered no.

Q What did you testify with respect to the list of 12?

A My testimony there, relative testimony to the list of 12, was truthful testimony. We went through the list and Mr. Hewett, the examiner, asked me questions relative to the list and I answered them.

Q What was your testimony with respect to the newsletter?

A I recall the testimony. I was asked the

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question had I seen the letterhead of Select Enterprises and I answered the question no.

Q Was that true or false?

A That was false.

Q What was the next event that happened with respect to Select Enterprises after your appearance before the Securities and Exchange Commission?

A Later, approximately a week, I prepared a financial statement which was subsequently presented to one of the banks that we were doing business with, and I don't recall which one.

Q Did that financial statement mention Select Enterprises?

A Yes.

Q Look at Exhibit 293. Can you identify that document?

A I can. This is the financial statement discussed and it does carry my signature.

MR. SUSSMAN: We offer it.

(Government's Exhibit 293 was receved in evidence.)

Q Referring you to that portion of Exhibit 293, it mentions Select Enterprises. It says 10,000 shares at $12. Can you tell us the source of that $12 figure?

Where did you get it?

A How am I going to state this?

Mr. Bickel and I consulted a Dallas stockbroker -- whose name I no longer recall -- and this quote was secured from him.

Q What happened next with respect to Select Enterprises following that?

MR. SEGAL: If I may, your Honor, I am sorry to say that Exhibit 293 has certain numbers on it. I would ask that the top numbers be excluded.

THE COURT: Did you put those top numbers on there?

THE WITNESS: No, your Honor.

THE COURT: Is there any objection to that?

MR. SUSSMAN: That may be redacted.

THE COURT: Can we block that out? Will it interfere with anything if we take a pen and block that out?

MR. SUSSMAN: I can provide something opaque to take that out.

(Pause.)

THE COURT: Look at the exhibit and see if it is satisfactory in form now, Mr. Segal.

(Pause.)

MR. SEGAL: Yes, your Honor.

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BY MR. SUSSMAN:

Q What happened next with regard to Select Enterprises after that?

A The next event that I recall was either late April or early May when I became in rather serious financial difficulty and at a conference with Joe Boyd and Ernie Mullenax I expressed this financial difficulty and explained that I needed a minimum of $3000 rather quickly.

Q Before you go on with any more of that conversation, do you see Mr. Mullenax in the courtroom?

A Yes, I do.

Q Point him out?

A He is the gentleman over here with the light blue necktie and dark blue suit (indicating).

Q What, if anything, happened after that?

A At that point Joe Boyd instructed Ernie to give me --

MR. EHRLICH: Objection, your Honor. I move to strike that portion of the answer that has been given.

THE COURT: Can you use another verb which indicates action and not conclusion for the word "instructed"?

THE WITNESS: I understand. I'm sorry, your Honor.

A (Continuing) Joe Boyd told Ernie Mullenax to give me $4000.

MR. EHRLICH: Your Honor, I still press the objection on an additional ground. There has been no testimony that this conversation was in Dr. Mullenax' presence.

THE COURT: Overruled.

Q Who was present at that time?

A Joe Boyd, Ernie Mullenax, and myself.

Q What happened, if anything, after that?

A Ernie agreed to do this and we made arrangements to go to --

MR. EHRLICH: Objection, your Honor.

THE COURT: Again, instead of using the verbs that you did use, if there are any active verbs that describe the conduct involved or the speech involved please use those.

A (Continuing) Ernie Mullenax stated that he would do this, and then we made arrangements to go to Wichita, Kansas and cash this check that we are speaking of.

As I recall the sequence of events, Ernie had to run to Wichita and I then flew up myself and was met by Ernie, and we went to his home and the check was

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written in the amount of $4000.

We then went to the bank, which was Ernie's bank, and he arranged for a bank-to-bank transfer of $3000 into my personal account in Fort Worth by wire. The remaining $1000 in cash was taken in cash, and I took that cash and flew back to Dallas with this cash which was given to Jim Joiner.

Q Will you look at Government's Exhibit 294 for identification --

MR. EHRLICH: Your Honor, I move to strike the last answer in toto.

THE COURT: Denied.

Q Look at Exhibit 294, please, for identification, and tell us whether you can identify any portion of that exhibit?

MR. EHRLICH: Your Honor, I have an objection before the witness proceeds to look through that document.

THE COURT: Do you object to him looking through it?

MR. EHRLICH: Yes, your Honor.

THE COURT: He may look through a document.

MR. EHRLICH: Your Honor, I have a written communication.

THE COURT: That's all right. Hand it up.

The witness may look at a document silently.

(Pause.)

THE COURT: This memorandum sent up here is noted and it is marked as Court Exhibit 10.

(Court Exhibit 10 marked.)

THE COURT: What is the next question after he has looked at the document?

Q Can you identify any portion of it?

THE COURT: If there is any objection to that, that objection is overruled.

MR. EHRLICH: Thank you, your Honor.

A Yes.

Q Please indicate the pages of the document by number upon which the portion of the exhibit identified appears?

A On the fifth and sixth pages are photostated a check made out to me in the amount of $4000, and on the sixth page is the reverse side of the check showing my endorsement.

MR. SUSSMAN: We offer Exhibit 294 to the extent of that check, your Honor.

THE COURT: Can that be taken apart in some way?

Q Let me ask another question in advance of the offer:

What if any relationship does that check bear to the $4000 that you just testified about?

A That's the check that I subsequently cashed, or previous to this I cashed it, I suppose, and from which I got the $3000 and the cash was taken, the thousand.

MR. SUSSMAN: We now offer 294 to the extent of that check.

THE COURT: It will be received.

(Government's Exhibit 294 was received in evidence, as indicated on the record.)

THE COURT: Should this now be detached and marked as 294-A?

MR. SUSSMAN: I think we can leave it as 294. There will be further testimony concerning that exhibit.

THE COURT: The check which has been received will be marked as 294-A for purposes of identification.

Now, Mr. Sussman, look at this and see if this is the correct exhibit that has been marked as 294-A.

MR. SUSSMAN: It is the check in the middle of the page that has been marked as 294-A, and 294-A should include the following page, the corresponding portion of that check.

Q Look at the exhibit, just to be doubly sure, the check so indicated. Is that indicated as 294-A?

A Yes.

Q Look at 295, please, and tell us if you can identify that document?

A Yes. Exhibit 295 is a deposit receipt from the Southwest National Bank at Fort Worth indicating a $3000 deposit from the East Side National Bank of Wichita, Kansas by wire and into my account.

Q What if any relationship does that bear to the $4000 you have been testifying about?

A This is a portion of that $4000.

MR. SUSSMAN: We offer 295, your Honor.

THE COURT: Government Exhibit 295 received in evidence.

(Government's Exhibit 295 was received in evidence.)

xx Q What if anything happened after this $4000 transaction? What was the next thing?

A The next thing was that I was later asked by Joe Boyd and Jim Joiner if I would -- They explained to me that they had a check also from Ernie Mullenax and they asked me if I would fly to Wichita and convert it to a certified check for them.

Q Did you go anywhere before that happened?

A Yes.

I am trying to remember the circumstances.

I believe at this point, as a matter of fact, to the best of my recollection, there was a meeting held at the Ramada Inn.

Q When was that?

A That would be in mid-May, as I recall. It was shortly after.

Q Did you attend this meeting?

A Yes.

Q Did anybody ask you to attend?

A I don't recall the specific events of my invitation.

Q Can you tell us who besides yourself attended this meeting? Before you tell us that, tell us if it had anything to do with Select Enterprises?

A Yes, it did.

Q Who besides yourself attended?

A Myself, Joe Boyd, Dr. Knisely, Albert Hanson, Howard Brookshire, and there were some additional ones there whom I cannot recall, but there was also a man by the name of Godfrey Sullivan.

Q Tell us, please, what happened at this meeting.

Tell us where it occurred.

A It occurred at the Ramada Inn in Irving, Texas, which is also a suburb of Dallas, in a small meeting room. At that meeting the best that I can recall of the substance of the meeting was that Joe Boyd introduced Godfrey Sullivan to the meeting as an attorney from Waco whom he had contacted in order to ask him to make a study of Select and see if something could not be done to help to solve the problems it was having with relation to SEC. Mr. Sullivan then took over the meeting and he described -- he indicated, I should say, he told us, that he felt like he could -- I think he used the words -- I recall him using the words "cleanup" relating to solving the problems of Select which he described as part of his presentation. He gave a brief description of what the word "fraud" meant, and he indicated that in his opinion Select was awfully close to it but he felt that he could solve those problems, and that was the substance, as I recall, that was reported to us.

Q Did anything else happen at that meeting?

A The only other thing I recall is the meeting then became somewhat unformal, informal, and there was a good bit of individual chitchat of an enthusiastic nature. It would seem that everybody was happy with his present-

ation.

Q What happened, if anything, with respect to Select Enterprises after that meeting?

A I think the next thing here was the invitation or the request to get this check taken care of in Wichita, Kansas, so I -- I should restate that.

Q Why don't you state what check it is you are talking about, who asked you to do anything if anybody did with respect to it, and so forth?

A As I recall, Mr. Joe Boyd and Jim Joiner indicated, told me, that they had a check and asked me if I would fly to Wichita, Kansas in order to convert it into a cashier's check, and I am certain they showed me the check and it was a check in the amount of $9000 made out to J. J. Joiner, and it was also on the account of Ernest Mullenax.

Q Would you take Government Exhibit 296, please, look through it, and tell if you recognize any part of that?

A Yes. On pages 4 and 5 are the front and back respectively of the check that I have been talking about.

MR. SUSSMAN: Your Honor, we offer Exhibit 296 to the extent of that check, and would request that it be marked as 296-A but not separated from 296 physically.

MR. EHRLICH: Your Honor, one question on voir

dire, please?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. EHRLICH:

Q Dr. Chapel, if you can just answer yes or no. Is the maker, the drawer of that check Ernest R. Mullenax?

A Explain what you mean by "the maker" or "the drawer".

Q You see the front of the check?

A Yes, sir.

THE COURT: The person who signed the check.

Q Is it signed by Ernest R. Mullenax?

A No.

MR. EHRLICH: I object to the acceptance of this exhibit in evidence.

MR. SEGAL: I object on the basis of relevance.

THE COURT: Are there any further questions?

MR. SUSSMAN: Yes. Let me go on with them and then make the offer again.

BY MR. SUSSMAN:

Q Now that you have identified that particular check --

MR. SUSSMAN: May we deem it 296-A, your Honor?

THE COURT: Yes.

Q We will call it 296-A. Will you please tell us what if anything you did with that check from the time you first saw it until the conclusion?

A Well, as I recall, I did go to Wichita, Kansas. I flew up there, and on this occasion I recall that I rented an automobile at the airport, drove to the bank, met Mrs. Mullenax who helped me, she introduced me and identified me, so I, in turn, could have a cashier's check made. Subsequent to that a cashier's check was made and I took the cashier's check back to Dallas and gave it to Mr. Boyd and Mr. Joiner.

Q Are you the person to whom Exhibit 296-A is made payable? Does it say to pay William Chapel?

A This is 296-A?

Q Yes.

A No. I am not.

MR. SUSSMAN: The Government renews its offer of 296-A.

THE COURT: What about the account on which it is drawn? Is there any indication on the document as to the account on which the item is drawn?

MR. SUSSMAN: There is on the document an account. I have trouble reading it from my copy of the

exhibit.

Q Is there an indication on that document, 296-A, Doctor, whose account it is that that check is drawn on?

A The printed name or names on the account are Ernest R. Mullenax and Margard L. Mullenax.

MR. EHRLICH: Same objection. I understand that all exhibits are taken subject to connection and I will have a motion at the end of this witness' testimony. However, the same objection with respect to the exhibit.

THE COURT: And the objection is what legally? What is the legal objection?

MR. EHRLICH: Relevancy and improper foundation.

THE COURT: I have no difficulty with the subject of relevancy. Suppose I talk to counsel about it during the luncheon recess, which we will have in a few minutes.

You can go on to something else.

Q Would you look at Exhibit 268, please, and tell us if you can identify any signature on that document and what, if so it is?

A Yes. I can identify my signature.

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Q Did there come a time, at the latter part of August 1970 --

MR. EHRLICH: Your Honor, may I interrupt, please?

I make a motion to strike at this time all of the witness' testimony with regard to what has been marked Government Exhibit 296-A, since that check was not received in evidence, at this time.

THE COURT: Motion denied.

MR. EHRLICH: Thank you, your Honor.

Q Let me rephrase the question.

Directing your attention to the latter part of August 1970, did you have occasion to write out any piece of paper, prepare any piece of paper having any relationship with Select Enterprises or referring to Select Enterprises?

A I don't recall.

Q Would you look at Government Exhibit 297 and tell us if you can identify that document?

A 297?

Q Yes.

A Yes. This is a personal financial statement over my signature.

Q Did you prepare that, sir?

A Yes, I did.

Q Does it refer to Select Enterprises, Inc.?

A Yes, it does.

MR. SUSSMAN: We offer it, your Honor.

MR. SEGAL: Your Honor, a brief voir dire.

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. SEGAL:

Q Dr. Chapel, if you will look at that exhibit, please, on the bottom you will notice, underneath the signature, certain written material. Is that material yours?

A No, sir, it is not.

Q Was that on the statement at the time you submitted it?

A No, sir.

MR. SEGAL: I ask that it be excised.

THE COURT: Are you talking about the material -

MR. SEGAL: In handwriting at the bottom.

THE COURT: Oh.

Are you also talking about the same thing Mr. Segal is talking about?

THE WITNESS: Yes, your Honor.

THE COURT: All of this material (indicating)?

THE WITNESS: Yes.

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THE COURT: Well, I take it that, Mr. Sussman, you can get this rephotostated just so as to have the top part of it --

MR. SUSSMAN: Certainly.

THE COURT: -- which will then omit the bottom writing.

MR. SUSSMAN: Certainly, your Honor.

THE COURT: All right. Then as so redacted it will be admitted, the top portion only.

(Government Exhibit 297 for identification was received in evidence)

Q Dr. Chapel, if you will look under the words "stocks and bonds" listed as an asset in this financial statement, you will see an entry "7,000 shares Select Enterprises, Inc., $105,000."

What does that work out to per share, dollars per share?

A Fifteen.

Q And what was your source for that per share valuation?

A Joe Boyd.

MR. SUSSMAN: No further questions on direct.

THE COURT: I think Mr. Rhodes requested the first opportunity to speak to this witness.

MR. RHODES: Yes.

THE COURT: Before we go forward, I have had some communication with Mr. Rhodes and Mr. Krieger in respect to a comment that Mr. Joiner is alleged to have made regarding the press release.

I am striking out Mr. Joiner's comments entirely with regard to that press release and it is to be given no credence or effect and is to be disregarded by the jury entirely and form no part of the evidence in this case.

Is that satisfactory, Mr. Krieger?

MR. KRIEGER: Yes, your Honor.

THE COURT: Mr. Rhodes?

MR. RHODES: Yes, your Honor.

THE COURT: All right.

CROSS EXAMINATION

BY MR. RHODES:

Q Dr. Chapel, I am Dusty Rhodes. I represent Mr. Barnett in this case. He is the certified public accountant whom you referred to a moment ago.

Dr. Chapel, you noted a moment ago that you had some problem remembering certain items.

Have you had a chance, prior to the testimony that you have given in this case today, to examine the

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previous SEC testimony?

A My testimony?

Q Yes, sir.

A I've gone through it, yes.

Q All right.

I noticed also that you have testified before the grand jury on this case, is that correct?

A Yes.

Q And I believe you stated earlier that you gave untruthful statements to the Securities and Exchange Commission; is that right?

A Yes, sir.

Q Did you give any untruthful statements to the grand jury?

A Yes.

Q On that occasions, doctor, I noticed that you had problems remembering on one particular occasion whether you went to the State of California for the examination of property there, you had trouble remembering whether you went to California or New Mexico.

Do you recall that?

A I recall -- I think I recall what you are talking about, but I don't think it had anything to do with California. I think rather it had to do with Nevada or

New Mexico.

Q So that was just a lapse of memory.

A Yes, sir.

Q All right.

Now, doctor, further, in giving your testimony here today, you had occasion also to refresh your memory relative to your testimony with the United States Attorney, of course, regarding discussions.

A Yes.

Q So would it be a fair statement to say, then, that you have a good memory about some things but some things that happened in 1970, five years ago, you can't remember?

A Well, I'm certain that the items that I have testified to, at least to the very best of my recollection, are the facts as they happened.

Q All right.

Now, with respect to your testimony as to your receiving in February of 1970, I believe, a pro forma balance sheet, do you recall testifying to that?

A In February of 1970?

Q Yes, sir.

A Yes.

Q That is Government Exhibit 2-I.

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Mr. Krieger, have you found that for me?

(Pause)

(Government Exhibit 2-I was handed to the witness)

Q Doctor, you have been in other business relationships for a number of years, have you not, other than EMS?

A Yes.

Q And you are familiar with what a financial statement looks like, aren't you?

A I think so, yes.

Q You have seen many of them throughout the years, have you not?

A Yes.

Q All right.

Would you look at 2-I and tell the jury what type of statement Exhibit 2-I appears to be to you?

A Well, the heading on page 2 identifies this report as a pro forma balance sheet.

Q What is a pro forma balance sheet, as far as your information is concerned?

A I don't really know.

Q You have no knowledge about this matter?

A That's correct.

Q Well, using the English language, then, could

you help me? Would you say "pro" means that it is not an actual statement of events but it reflects what might happen if certain other things happen?

A I will accept your explanation.

Q All right.

Then would you examine that and tell the jury whether or not you see any indication on the pro forma statement that you are examining that EMS was a part of Select Enterprises?

A No, there is nothing there about EMS being a part of it.

Q All right.

And at this time, in February 1970, there was just a possibility of EMS becoming a part of Select, and in effect you did not recognize at that time that it was a part of Select.

A Yes, that's right.

Q Now, who furnished to you the pro forma balance sheet that you have before you?

A Joe Boyd.

Q Now, with respect to the meeting that you testified earlier that you attended in Abilene on March 26th, 1970, I believe you stated that this was at the Ford Building, is that correct?

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A I was told that it was at Mr. Ford's office.

Q Well, isn't there a big sign outside in front of the building saying "Ford Building"? Do you recall that?

A No, sir.

Q Do you recall that the building is a one-story structure and that there are offices on two sides of a hallway?

A Yes, I seem to recall that.

Q And, as you enter the front door, there is a large reception room?

A Yes, I remember that.

Q And as you proceed down the left side, or down the hallway and on the left side, there are several offices as you proceed down the hallway, is that correct?

A I believe so, yes. I have a rather vague memory of the physical structure, but I seem to know that's the way that is put together.

Q And Mr. Ford's office, you recall, is on the left side also.

A Yes.

Q And on down the hallway there is a large board meeting room, or at least a large legal law library with a large table similar to the one at which counsel

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here are sitting, is that correct?

A Yes.

Q And further back there is a large reception or a large coffee area and lounging area, in the back of the building. And then on the right side of the hallway there are numerous offices, is that correct?

A I remember the coffee shop. I remember the hallway. I don't recall how many offices there are in the building.

Q Now, with respect to this meeting that you attended, you stated earlier that you were actually within the board meeting room, within the large room with the large table, is that correct?

A That's my recollection, yes, sir.

Q All right.

Now, on this occasion you stated, or earlier you stated, that Dr. Knisely was there, Mr. Boyd was there, Mr. Maxson was there, you were there, Mr. Ford was there; is that correct?

A That's correct.

Q All right.

I believe also that you stated that Mr. Barnett was there. I want to test your memory regarding that matter.

Did you not meet Mr. Barnett in another office in this building on the same occasion?

A I don't recall.

Q And do you recall that Mr. Barnett was not in this meeting? You stated earlier that he was. I want to test you specifically.

I believe when you came in you met Mr. Barnett in the back coffee shop, isn't that correct?

A I don't recall where I met him.

Q This is five years ago, isn't it?

A Yes.

Q And you cannot recall and tell this jury at this time whether Mr. Barnett was sitting in that board meeting room.

A In the actual conference room itself? No, I could not.

Q So the testimony that you gave earlier that he was in the board meeting, of course, was an inadvertent error, is that correct?

A I would say yes.

Q Let me refer back now to the board meeting.

On this occasion, I believe, while you were attending the board meeting, there were various acquisitions of property discussed, is that correct?

A Yes, that's correct.

Q And on this occasion were there presentations to the board of appraisal reports presented?

A Yes.

Q And with respect to the acquisition of the oil and gas property, did you hear and see presented to the board an appraisal report prepared by Mr. Joe Brown?

A The only thing that I can recall, that I feel confident of the recollection relative to these properties, is a discussion or a description of the properties themselves and information relative to their location and their value.

Q All right.

A And as to who presented which, or Mr. Brown, I don't recall in that much detail.

Q But you do recall that there were actually written appraisal reports, isn't that correct?

A No, I'm sorry, Mr. Rhodes. I don't have any clear recollection of what you refer to as written appraisal reports.

Q All right. There could have been, but you've forgotten.

A That would be correct.

Q Doctor, further, with respect to the Mica

Mine, do you recall whether or not there were actual written appraisals on the Mica Mine presented to the board?

A No, sir, I don't recall that either.

Q It could have been, but you've forgotten that?

A That is correct.

Q And with regard to the California property, do you recall whether or not actual written appraisals were presented to the board on that?

A No, I do not.

Q It could have been but you've forgotten?

A It could have been.

Q Now, do you recall whether or not there was actually a discussion and report to the board relative to the status of a title on the subject property? Do you recall title opinions being discussed?

A No, I do not, not title opinions, no.

Q Now, do you recall specifically that there were no discussions, whether or not there were any discussions, relative to any possible SEC investigation at the time of the board meeting?

A I recall no such discussion.

Q And you can tell the jury that there were none?

A May I put it this way: There were none in my

presence.

Q All right. That's what I'm asking you to testify to, what you know.

And at this time you were not advised of any possible SEC problems, were you?

A That's correct.

Q Now, I believe you stated that you prepared a press release after you received the financial statement on March 28th, or dated March 28th.

A If my memory serves me, it was after, but it could have been on the very same day.

Q At any rate, you prepared that in Dallas, is that correct?

Q And then you attached something to that financial statement that you received, didn't you?

I am going to hand you what has been marked, but not admitted, Exhibit 4-G and Exhibit 4-H.

Would you tell the jury whether the original financial statement that you received by Mr. Barnett, dated March 28, 1970, was in that brown folder.

A Whether it is in here now?

Q No. Was it in there at the time you originally saw it and at the time it was originally presented to you?

A No.

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Q All right.

In fact, the report prepared by Mr. Barnett was merely five pieces of paper clipped together, is that correct?

A That's my recollection. I'm not sure of the five. I would have to go and count them.

THE COURT: Mr. Rhodes, I think we will suspend now until 2:00 o'clock.

The jury may recess for lunch.

(The jury left the courtroom)

(Luncheon recess)

AFTERNOON SESSION

(2.05 p.m.)

THE COURT: The memorandum from counsel for Mullenax will be marked as Court Exhibit 11. The motion set forth therein is denied.

(Court Exhibit 11 marked.)

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W I L L I A M C. C H A P E L , resumed.

CROSS EXAMINATION (Continued)

BY MR. RHODES:

THE COURT: You may read Court Exhibit 11, Mr. MacDonald, at a propitious time.

Please proceed.

Q Dr. Chapel, I believe the question immediately prior to lunch was with respect to Exhibit 4-G, which you have before you. Did you state on that occasion that you prepared or assisted in the preparation ofthe folder, the brown folder, that is immediately before you?

A Your question is did I participate in the preparation of these?

Q Yes.

A Yes.

Q In effect, did you obtain or purchase or cause to be purchased the folder itself?

A I don't have a real clear recollection of exactly how the purchase of the folder took place.

Q In effect, sir, you included within the folder -- on the outside of the folder, I believe, it states financial statement?

A Yes.

Q You included items within that folder which were not and did not have anything to do with the financial statement of Mr. Barnett?

A That's correct.

Q Tell the jury to whom the financial statement is addressed. Open the folder and get down to the financial statement.

A It is addressed to the board of directors of Select Enterprises- Inc.

Q You were not a member or were not a part of the board of directors of Select Enterprises, Inc. on that date?

A That's correct.

Q You were never selected to the board of directors of Select Enterprises?

A Correct.

Q Doctor, did you ever have permission from any member ofthe board of directors of Select enterprises to

put that financial statement along with other material unrelated to the financial statement?

A I was told to do this by Joe Boyd. I don't know whether he was a director or not.

Q You have since found out that he was not?

A I don't have any clearer recollection as to whether I actually found that out.

Q Other than Mr. Boyd, did you have any other permission from anybody in the board of directors of Select to include additional items attached to the financial statement?

A Not to my recollection.

Q Doctor, did You ever obtain permission from any member of the board of directors of Select Enterprises to use the financial statement for any purpose?

A Again, not to my recollection.

Q Doctor, did you ever at any time obtain permission from Mr. Wayne Barnett for the purpose of using the financial statement In Exhibit 4-G?

A No.

MR. RHODES: Those are the questions I have.

THE COURT: Mr. Segal.

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CROSS EXAMINATION

BY MR. SEGAL:

Q You indicated in the course of your testimony, Dr. Chapel, that you are presently employed with some organization. What organization was that?

A That I am now presently employed?

Q That's correct.

A No, I am not. I'm in the process of going into private practice in New Orleans.

Q When did your employment with the Parker Chiropractic organization end?

A The most recent was August 1st of this year, 1975.

Q Tell us what that was. What is the name?

A Parker Chiropractic Research Organization. That's an organization that puts on seminars for chiropractors, their wives, and their assistants, and teachers practice management, practice building, office procedure, as well as certain technical subjects such as x-ray technicians, and things of that nature.

Q How long did you work for that organization?

A From the beginning until the end? I began in January of 1963 and then I terminated, finally, on August 1, 1965. There were, however, a couple of periods

in between where I was not employed by that company.

Q Is that organization still in existence?

A Yes, sir.

Q When you and Mr. Bickel organized EMS, was that organization of EMS based upon the same type of concept as the Parker Foundation?

A To a large degree let's say similar.

Q In fact, you at one time had made an analysis of the chiropractic field and the function that Parker Foundation was contributing to that field; is that right?

A I'm not really sure I understand.

Q Had you at one time attempted to make an analysis of the available market for the kind of enterprise that Parker Foundation was involved in?

A The answer to that question is yes.

Q As part of that analysis there was a group of information that you put together which indicated that EMS could fill an appreciable part of the market; is that correct?

A I'm not sure I know what you mean by "appreciable".

Q Let me show you Government's Exhibit 283 in evidence. You had, in fact, analyzed in that document, did you not, the growth potential market and what you

in between where I was not employed by that company.

Q Is that organization still in existence?

A Yes, sir.

Q When you and Mr. Bickel organized EMS, was that organizationof EMS based upon the same type of concept as the Parker Foundation?

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A The answer to that question is yes.

Q As part of that analysis there was a group of information that you put together which indicated that EMS could fill an appreciable part of the market; is that correct?

A I'm not sure I know what you mean by "appreciable".

Q Let me show you Government's Exhibit 283 in evidence. You had, in fact, analyzed in that document, did you not, the growth potential market and what you

felt EMS could obtain from what was then being taken up by the organization performing the kinds of work that Parker was doing: is that right?

A Yes.

Q When you wrote this, did you have any reason to doubt the accuracy of the analysis as to the need for an EMS-type operation or a Parker-type operation?

A No.

Q So I assume that if we would refer to Paragraph D in Exhibit 283 you would at this moment substantiate the reasoning at least in that paragraph?

A Let me read the paragraph.

(Pause.)

Now, may I ask for the question again?

Q Would you agree at this moment with the reasoning that went into this paragraph and the conclusions in that paragraph?

A Yes, I would. The figures would be changed, I am sure, over this length of time.

Q Would they be changed to any appreciable amount?

A No. That would be difficult to say.

Q At any rate, as of this moment you feel, do you not, that the function that EMS was trying to perform is a necessary one? Is that correct?

A Yes.

Q And that there is a possibility and available potential market which, if tapped properly, would make EMS a profitable business?

A Yes.

Q Incidentally, the assets of EMS were essentially the ideas and the concepts that had been worked out by both you and Mr. Bickel? Isn't that true?

A I suppose you could say that, yes.

Q Very much like Joe Namath's asset might be his right arm; is that right?

A That could be a comparison.

THE COURT: What does Joe Namath have to do with this?

MR. SEGAL: His assets don't consist of furniture or any other item, but his ability is merely to throw a football.

THE COURT: We don't know that. That's not in evidence.

MR. SEGAL: Very well, your Honor.

BY MR. SEGAL:

Q It was not necessary, was it, for EMS to have a large physical plant?

A No. Not at that point.

Q When your meetings were held you would rent or lease certain locations in order to hold these meetings or these seminars?

A That's correct.

Q In effect, the ability of your organization to succeed was one that, in fact, needed no great or elaborate physical plant? Isn't that correct?

A That's true.

Q Most of it we could say would be both in your head and in Mr. Bickel's head?

A Yes.

Q His skills interpreting, his skills in insurance, they were much like your skills in the chiropractic area; isn't that correct?

A That's true. Similar.

Q People were buying you and your programs; isn't that correct?

A That's true.

Q You had based the organization of EMS on your experience that had been gained as a result of your employment by the Parker Foundation; isn't that correct?

A Essentially, yes.

Q Do you know what the Parker Foundation earned in 1970, or do you have any idea what its figures were?

A No, I don't.

Q Would it be in the millions?

A I doubt that its net figure would be that high.

Q Would its gross be that high?

A I'm not sure that I can say accurately. I would have to --

Q It would be more than a few hundred thousand dollars?

A Yes. I would say so.

Q It might be as much as 1 or 2 million, wouldn't you say that?

A Just off the top of my head I would say I doubt it would be as high as 1 or 2 million.

Q Close?

A Possibly close, yes.

Q As a result of our analysis of the chiropractic market you felt that EMS was a viable corporation; isn't that correct?

A Viable?

Q Yes.

A Yes.

Q And that it had potential?

A Yes.

Q When you appeared at this meeting, March 26,

you were there in order to obtain some financial help, were you not?

A Well, yes. That was the underlying purpose of my thinking. I was there to talk to the group about EMS actually, but the end result was certainly a desire for financial assistance.

Q It was of interest to you, was it not, in obtaining this you would present the best possible picture at that time?

A That would be true.

Q Did you do so?

A Yes.

Q You indicated, I believe, in the course of your testimony that you drew up an agreement between EMS and Select; isn't that right?

A That's correct.

Q You actually wrote that agreement out, did you not?

A I will revise that. Myron Bickel actually composed it and wrote it out.

Q Mike Bickel was a lawyer who didn't practice, isn't that right?

A That's right.

Q So he had these extra skills in addition to his

other skills?

A That's right.

Q You collaborated therefor on that proposed contract, did you not?

A That's right.

Q Do you recall whether or not part of the terms of that contract was that he debt would be observed in at leas: two different ways, the debt of EMS?

A I don't recall specifically that wording.

Q I show you Exhibit 282 in evidence. I ask you if you will just take your attention down to next to the last whole paragraph on page 2. Read that and see if that refreshes your recollection as to what if any provisions were being made for the debts of EMS?

A You mean the last full paragraph?

Q Yes. It starts with "For and in consideration of" --

A I was on the one above that. I'm sorry.

(Pause.)

I have completed it. What is your question?

Q The question is this: Is there a provision made in that paragraph for relieving EMS of certain debts?

A To the extent that Bickel and I agreed to assume them on a percentage basis.

Q Did you insert that as a result of a conversation you had with Mr. Boyd or anyone else indicating that if you were to be acquired by Select your organization would have to be debt free?

A I don't honestly recall a conversation specifically to that end.

Q I assume that this paragraph was inserted in order to at least allay any problems that might arise because of the debt position that at that time EMS had?

A I think that's a fair statement.

Q Because it was true, was it not, that so long as EMS was in a debt position it might compromise the ability to make a deal with Select; is that correct?

MR. SUSSMAN: We object to this line at this point.

THE COURT: You object to the form as well as the substance?

MR. SUSSMAN: Yes.

THE COURT: I sustain the objection.

Q Do you think that at that time a debt position in EMS might compromise its ability to conclude a transaction with Select?

A I don't recall having had any conversation with the Select people which would indicate for me that for EMS

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to be in debt would jeopardize this sale.

Q Why did you assume the debt?

A I have to say I don't know. I don's know wby Bickel and I decided to do that other than to make EMS as clean as we possibly could.

Q Why?

A I can't answer the question. I don't know.

Q Because if it was not clean it would not be acquired; isn;t that correct?

A I don't recall there ever being such a criterion l aid down to me saying you have to clean it up in order to do this.

Q Was ever any criterion laid down to you in which the expression was stated that Select would only acquire debt-free corporations?

A That I am familiar with, yes, sir.

Q Was that not the reason why it was that you and Mr. Bickel assumed the debt position of EMS?

A All I can say is that I don't recall having that particular point become a major issue in any of the discussions that we had.

Q Would it be fair to say, Doctor, that not having a debt position couldn't hurt.

MR. SUSSMAN: Your Honor, asked and answered.

THE COURT: Sustained.

Q I now show you, Doctor, Exhibit 4-F. It is the best we have at the moment. It deals with the subject matter in which I am interested. If you will just look at that (handing). I am referring in that exhibit that you have only to the item which is labeled news release. You see that? That's right on the top. It consists of three pages.

A Yes.

Q You indicated that you were the author of this document; is that right?

A Yes.

Q I assume that you were asked to write this because part of your skills are in drawing up study programs and writing is an integral part of what you do?

A Correct.

Q Did you volunteer to do this?

A No. I was asked.

Q You were asked to do that. Did you get any kind of remuneration for the service?

A No not specifically.

Q By the way, Doctor, in connection with EMS, had EMS been borrowing money for a period of time in order to sustain itself?

A Yes.

Q When was the first borrowing that took place?

A I'm not clear on the answer to that question. I don't recall exactly when it was. It would have been in probably mid-1969.

(Continued on page 839.)

Q And EMS was founded, was it not, at the beginning of 1969, sometime in January?

A That's correct.

Q Now, a part of the articles of incorporation of EMS makes some provision for salaries and the like, do they not?

A Yes.

Q And they also made some provision for some other items, including the use of an automobile, isn't that correct?

A That's correct.

Q What was the provision for that, if you recall?

A I don't recall it. I recall only that there was one.

Q What was the salary that you and Mr. Bickel were to draw?

A To the best of my recollection of that, I believe it was in the area of $2,000 a month.

Q And that was how much a year, doctor?

A $24,000.

Q So between the two of you you would draw $48,000 out of that organization, is that correct?

A In the year, yes, sir.

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Q And what was the automobile provision that you had?

A I'm sorry. I don't recall.

Q Was it something in excess of $1,000?

A I'm sorry, I just don't recall the amount.

Q Doctor, I'll help you just as soon as I can help myself find the document.

A Okay.

(Pause)

Q Doctor, I show you Exhibit 186 for identification and, if you would, you will have to read that item to yourself, just to refresh your recollection.

I call your attention to the bottom, to what I believe is thie third page of that exhibit, and see if that refreshes your recollection as to what automobile allowance payable monthly there is. Don't read from it. Just see if it refreshes your recollection. Then you can tell me if it does.

(Pause)

A Yes, it does.

Q And what is that figure?

A $1200 per month.

Q Per month.

A Per month.

Q That was for your automobile, wasn't it?

A It stipulates for mine and for Bickel's.

Q Isn't there another $1200 for Bickel?

A Oh, yes.

Q So we are really talking about $2400 a month for autos, right?

A That's what it says.

Q Now, you had to entertain yourself, didn't you, doctor? Is there an entertainment allowance?

A There is.

Q How much?

A Another $1200 a month for each individual.

Q And that was in addition to the $48,000 that you and Mr. Bickel were drawing, is that correct?

A That's correct.

Q Now, doctor, is it possible that the debt position of EMS was based upon the fact that you and Mr. Bickel were milking that company?

A No.

Q You started to borrow a few months after January of '69, right?

A I think that's correct.

Q And when you started to borrow, what was the size of the first loan that was made?

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A I don't recall.

Q Was it in excess of $2000?

A I believe it was, yes.

Q Do you remember what bank that took place at, doctor?

A It would be either the Texas Bank or the Citizens Bank.

Q Did you ever fill out a personal statement, an income statement or a net worth statement for the Texas Bank?

A Yes, I believe I did.

Q In fact, doctor, you had a couple of forms for personal statements out of that Texas Bank, didn't you?

A You mean from the bank?

Q Yes.

A I would have a clearer recollection of it, but I certainly could have.

Q I show you Exhibit No. 269, this is in evidence, doctor.

If you would, doctor, would you look at the upper left-hand, or the uppermost edge of 269?

Do you see some small print?

A Yes.

Q What does it say?

A It says, "Form C8, Federal Reserve Bank of Dallas."

Q Doctor, isn't this the exhibit you said you used for submission to the Atoka Bank in Oklahoma?

A Yes, sir.

Q Well, why were you submitting a personal financial statement, which was on the form of the Federal Reserve Bank of Dallas, to the Atoka Bank of Oklahoma?

A So far as I know, I had no reason not to use that form.

Q You didn't just have that kind of form laying around the office, did you, doctor?

A I don't recall where we got it from. I say "we" because -- I perhaps should say I. I don't recall where I got it from.

Q Now, doctor, you had a 24-foot cabin cruiser, didn't you ?

A Yes, sir.

Q Did that come out of the entertainment expense of EMS?

A No, it did not.

Q Doctor, at the time that you submitted the personal financial statement which is in Exhibit 269, that is dated February 20, 1970, is that right?

A Yes, sir.

Q You had some personal debts, some loans outstanding, did you not?

A Yes, sir.

Q Can you tell me if all of the loans which you had taken out were listed on this form?

A The personal loans?

Q Yes.

I'll save you some time, doctor.

As a matter of fact, they weren't, were they?

A I was just trying to go through the mathematics here. I don't recall there not having been any -- I don't recall any that were not included.

Q Doctor, hadn't you and Mr. Bickel signed notes or obtained loans for EMS?

A Yes.

Q In which both of you were personally liable?

A Personally liable, yes, sir.

Q And shouldn't those have been on this financial statement?

A Yes, I suppose they should have.

Q And those are not included, are they?

A No, they are not.

Q Now, can we say about how large that exposure

was that you had on the loans that had been taken out for EMS?

A How large were they?

Q Yes.

A At this point, to the best of my recollection, it would be approximately 18 to $20,000.

Q And that is not on here, is it, doctor?

A That's correct.

Q When you were given immunity by the government, did they give you any immunity for submitting a false statement to a federal reserve bank?

A That was not specifically inclu-ed.

Q Do you want to cover it now?

THE COURT: What was that last?

MR. SEGAL: Strike that, your Honor.

THE COURT: Please do not make those comments that you are prepared to strike.

MR. SEGAL: Very well, your Honor.

THE COURT: The jury will ignore that.

Q Now, doctor, since the 1969 loan, which was a few months after January, I take it that the loans that were made by you and Mr. Bickel had not been paid off, isn't that correct?

A That's correct.

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Q And what you would do would be to negotiate succeeding loans after that, probably incorporating what was still outstanding on the previous loans, isn't that right?

A As I recall, that was done on some instances, yes. I can't be very specific.

Q So that, if I could just give you an instance, if you had taken out a loan for $2000 and then at a subsequent time you took out another loan for $5000, that loan would incorporate whatever you owed on the previous loan of $2000, isn't that right?

If you had paid it down, that would be $1000 plus a $4000 additional loan, isn't that right?

A Assuming it was at the same bank, yes.

Q But, at any rate, your debt position was double and sort of collapsed one on the other as you floated loans to keep yourself and the company going.

A Yes, that's true.

Q And at one point, I believe, in your testimony you indicated that there was going to be an exchange of stock of EMS for the stock of Select, is that correct?

A That's correct.

Q And it was going to be on the basis of EMS shareholders obtaining one share of Select for each three

shares that they owned of EMS, isn't that right?

A That's right.

Q And that was based, was it not, on a price of $15 per share of Select and $5 a share of EMS?

A That's right.

Q How did you reach the evaluation of $5 a share for EMS?

A That figure, if I am not mistaken, is in this original document, though it may not be.

Q Which document are you referring to, doctor?

A Exhibit 186, I believe it is. Or perhaps it is not.

In any event, in the beginning of EMS, Mr. Bickel and I attached a $5 per share value to EMS shares.

Q On what basis?

A I can't answer that question for you because that part of it, the mechanics leading up to that, was done by Mr. Bickel.

Q Is it true to say that $5 a share for EMS was an illusory figure?

THE COURT: Illusory?

MR. SEGAL: Illusory.

THE COURT: Fictitious?

MR. SEGAL: Fictitious.

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A At that point, yes.

Q So you were trading stock of EMS which was worthless for stock of Select which had a quote in the New York market of in excess of $15 a share, isn't that true?

A When you said we were trading, we didn't actually trade.

Q I'm sorry. You were obtaining for worthless EMS stock one share of stock of Select which had a quoted value on the New York market of in excess of $15 a share.

A We didn't obtain any Select stock for EMS stock.

Q That was what was contemplated?

A We were contemplating and talking about it, and it basically was the program that was brought to us as much as us going after it.

Q Now, at that time it is true, is it not, that you felt, and sincerely felt, that EMS was a good potential organization?

A That's correct.

Q The idea was good.

A Yes.

Q The concepts were good.

A Right.

A We believed so, yes.

Q And the personnel was good.

A We believed that too, yes.

Q What you needed, was it not, was some money infused in order to put that all together, isn't that right?

A That's correct.

Q And with money that organization would have gone, it would have floated, it would have flown, is that right?

A We would hope so, yes.

Q And you had every reason to believe it might because of the performance of Parker, isn't that correct?

A Yes. That was my experience, yes.

Q When you went to that meeting on March 26th to make your pitch, what did you tell that meeting about the potential of EMS?

A As I recall, it was essentially the same material which is contained in No. 283.

Q The 283 material is the analysis that you had made?

A Yes.

Q And it was the very document, was it not, on which, based upon the analyses that were made therein and

the fact that the estimate of the potential was so good, you estimated on page 3 of that document that "The above-estimate will generate a cash flow of at least $60,000 annually, based upon the conservative estimate of $600 per year per doctor participating," isn't that correct?

A Yes.

Q It was because of that, was it not, that you arrived at the figure that EMS could potentially obtain at least $115,000 per year or $230,000 during the following year, 24-month, period, is that right?

A Is your comment right?

Q Yes.

A Not precisely.

Q What would be the precise comment that would be correct?

A As I stated, we had agreed on the purchase price in terms of Select stock, and this represented some 15,333 shares, which multiplied by 15 comes up to in the neighborhood of $230,000.

And so the latter portion of my analysis of the two year forecast of Select was arrived at, again, arbitrarily to come up with a figure of approximately a quarter of a million dollars.

Q You and Mr. Bickel had an organization that

was flat at the moment, did you not?

A That's correct.

Q And it was to your interests, was it not, yours and Mr. Bickel's, to convince Select that EMS was a profitable and a potentially profitable organization, is that correct?

A That's correct.

Q And you did that so that they would believe that you could produce that kind of money, isn't that right?

A That's essentially true, yes.

Q Now, for that there was going to be, was there not, this one for three exchange, the three for one from your point of view; that is, three shares of EMS for one share of Select, right?

A Yes. Mr. Boyd did make that, shall we say, offer.

Q Well, Mr. Boyd didn't make the one for three offer, did he? You said that your stock was worth $5, right?

A Right.

Q He took you at your word, right?

A Yes.

Q And he said that his stock was worth 15 or more, correct?

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A Correct.

Q You didn't have to take him at his word, did you? You checked it out.

THE COURT: Checked what out?

Q Did you check out the price of the stock?

A Yes. I believe that I called early, in the game, at least one broker and did get at least a $15 bid, or quote, rather.

Q There was no place that anybody at Select could have called to get a quote on EMS stock, was there?

A No.

Q Now, this was going to be distributed, was it not, among the shareholders of EMS? Is that right?

A The select stock?

Q That's correct.

A Yes.

Q And you and Mr. Bickel made an estimate as to what each such shareholder of EMS would get on this exchange arrangement; is that right?

A That's right.

Q And part of that calculation at least was made on the basis of whether or not the EMS shareholders had in fact paid for the stock which was allocated to them.

A That's correct.

Q In other words, if somebody ostensibly owned 500 shares and he only paid for 200 of those 500 shares, he would get only 200 worth of the Select stock, correct?

A Yes.

Q So that would be the adjustments made, based upon what they had paid, right?

A Yes.

Q Now, if stock was to be given to shareholders for an exchange, what was going to happen to the extra stock for which the shareholders had not paid?

A I think that's clarified, isn't it, on those two yellow sheets?

C It is. I'm just asking for your comment on it.

What was going to be done with it?

A We-l, there were 14,333 shares listed on that sheet, and it designated who gets them all.

Q You ended up with, or would have ended up with, over 7,000 shares.

A And I believe Bickel likewise.

Q So, of the 15,333, you and Bickel would have taken in excess of 14,000 shares.

A That's correct.

Q In fact, almost 15,000 shares, is that right?

jgjw 16 Chapel - cross

A Yes, that's correct.

Q Will you tell me, doctor, why is it that the excess shares for which the shareholders of EMS had not paid did not go into the company and not into your name and Mr. Bickel's name?

A No, I can't explain that to you. I can't tell you why.

Q It should have, shouldn't it?

A I don't know.

Q You don't know?

A I'm not really prepared to answer the question, because I don't know how these things are normally done.

Q But you and Mr. Bickel were going to get a windfall, weren't you?

A We were hopeful of getting, I believe it is, 7400 shares each.

Q At the expense of EMS.

A At the expense of EMS? We would certainly have financed EMS adequately to make it successful, becuase it wouldn't be to our advantage not to.

Q But you would have loaned that money to EMS, wouldn't you?

A We didn't discuss how we were going to do it at that point.

Q When you say you were to finance EMS, you mean that you were to put EMS in debt to you?

A I don't know. We didn't discuss how that was to be done, Bickel and I.

Q Doctor, you have testified about the fact that at one point 10,000 shares of Select had been given to you by Mr. Boyd. Do you remember that?

A Yes.

Q Now, had you made that a condition of dealing with Select? Was this going to be an advance on the ultimate deal?

A Not according to my understanding,no,sir.

Q Was it according to Bickel's understanding?

A I don't know what his understanding was.

Q Now, you also testified, did you not, doctor, that the signatures were asked for on each of those certificates, is that right?

A The stock powers, you mean?

Q Yes.

A Yes, that's true.

Q Can you explain to us briefly what the significance of stock powers would be on the back of a certificate of stock?

A My understanding of it is that it makes it

jgjw 18 Chapel - cross

it possible for those shares to be transferred. Is that the right word?

Q You tell me, doctor.

A Well, that's my understanding of it.

Q Okay.

Now, I believe your testimony was, and correct me if I am incorrect, that all of the stock powers for all of those 10,000 shares were signed, isn't that right?

A To the best of my recollection, I supplied Joe Boyd one stock power for each of the shares of stock that he held.

Q Now, that stock was being held by you, wasn't it?

A No. It was being held by Joe Boyd.

Q And you there were signing all the certificates and you were giving them back to Mr. Boyd, right?

A That's the best of myrecollection on that.

Q And then Mr. Boyd gave you 3,000 of those shares back, is that right?

A Well, the mechanics of it. I don't remember whether I just kept the three and gave him seven back or whether I gave him the whole ten and he gave me three back.

Q If you were going to keep three, doctor, why did you have to sign the stock powers on the stock that you were going to have in your own possession?

A I can't explain it.

Q Is it possible you thought, doctor, you kept all ten?

A I have no recollection of having kept the ten shares at all.

Q Is it possible?

A What?

Q Is it possible?

A I don't believe so. My recollection is clear of giving those back to Mr. Boyd.

Q Do you have any proof of that?

A No, sir.

Q You have proof of all your other loans and debts, don't you?

A Yes.

Q That you supplied to the government, did you not?

A I supplied to the government? I think -- I'm not sure that I supplied everything.

Q You even told them where they could find it.

A Much of it they found themselves.

jgjw 20 Chapel - cross

Q But you never supplied them with any proof of the fact that you turned back 7,000 shares, did you?

A I didn't have any proof.

Q Now, doctor, in the course of the negotiation with Select you, at least in one instance, had been labeled as a consultant.

Do you recall that, in that document which you said had been sort of taken from the shareholders' letters that you had written?

A Yes, I remember that.

Q And you were described as a consultant, is that right?

A Yes.

Q Did you set up the logo, or the form, in which that mailing piece was going to be printed?

A I don't really recall whether I did all -- I didn't do the artwork, I'm sure of that, because I'm not an artist.

But I probably made the decision as to whether it should be folded twice, if that's what you mean.

Q Did you also make the decision as to whether or not you should be called a consultant?

A I don't recall whether I made that decision or whether it was a mutual decision among whoever happened to

be in on the conversation. I would suggest perhaps Mr. Bickel and perhaps Joe Boyd.

Q Is it possible that you and Mr. Bickel decided that you would be called a consultant?

A It is possible, yes.

Q You wanted to be called consultant because it would give EMS a little better whack, wouldn't it?

A I don't recall that being a part of any reasoning on the situation.

Q But you said, did you not, that you sent such a document to someone, did you?

A To a printer.

Q Yes.

A Yes.

Q And did you ever make use of this document?

A I personally do not recall having ever made use of it.

Q You never sent it to a bank?

A I don't recall having sent that one to a bank.

Q Doctor, during the course of your negotiations with Select, you never thought you were doing anything improper, did you?

THE COURT: He never felt he was doing something proper?

jgjw 22 Chapel - cross

MR. SEGAL: Something improper.

THE COURT: Improper.

MR. SEGAL: That's correct.

A You are speaking of your negotiations with Select relative to the absorption of the corporation?

Q That's correct.

A No.

Q In fact, it was going to be to your advantage and you felt it would also be to Select's advantage if that exchange or acquisition by Select took place, is that right?

A That is the reason we went into it in the first place.

Q Do you recall whether or not at any time, doctor, you had ever had any discussion with the board, for instance on that March 26th meeting, about your desire to be a consultant?

A I don't recall any such discussion, particularly at that board meeting.

Q Did you ever ask for some extra compensation in order to be a consultant?

A No, sir, not to the best of my recollection.

Q Doctor, of what value to Select would your being a consultant be?

THE COURT: I think we have had enough of this consultant talk. Let's go on to something else.

MR. SEGAL: All right, your Honor.

(Pause)

Q Dr. Chapel, at the time that you filled out Exhibit 269, you in fact had 10,000 Select shares, is that correct?

A I reported that I had 10,000 Select shares. But, according to the very best recollection I have, I did not have them in my possession.

Q You put that on this application because that would help you to get the loan that you were after, isn't that correct?

A As a matter of fact, at Joe Boyd's suggestion I put them on this application, this statement, for that purpose.

Q I know that's what you testified to. But I'm --

THE COURT: Please I don't want you to do that.

MR. SEGAL: Very well, your Honor.

THE COURT: The jury will pay no attention to comments by a lawyer, innuendos by a lawyer. The evidence is what comes from the witness stand, and remarks, innuendos and comments will be ignored.

Q Now, after you obtained the loan for which this personal financial statement was submitted -- well, first of all, was the loan for which this statement was submitted a loan which was already in existence? Was it a renewal of a personal financial statement in order to update for the bank's purposes your financial condition?

A This financial statement was used at the Atoka

Bank, to the best of my knowledge, to the best of my recollection, and it was used in connection with a note that I signed at Joe Boy'd request, with practically no explanation other than the fact if I were to do this it could easily help to save Select Enterprises.

Q So you were going to save Select by obtaining a loan, is that correct?

A I felt as though I was doing both Select and Joe Boyd a service in doing so, in signing this note.

Q Did you think you were doing any service to EMS?

A Indirectly I suppose one can say that, because if Select was saved, surely it would have a helpful effect on EMS as well.

Q Doctor, to this day do you still owe money on that loan which had been floated at Atoka?

A I haven't yet -- I haven't heard anything from them for ages, so I don't know what the status of it is.

Q Is there still an outstanding balance?

A I don't know.

Q Was that loan ever renewed?

A Not by me.

Q You say you never received any call on paying that loan, is that correct?

4jgjw 26 Chapel - cross

A I beg your pardon. I should qualify that very slightly.

You asked the question was the note ever renewed. Yes, it was renewed at least once. I had forgotten whether it was once or twice.

But that was back sometime, as I recall, either very late in '70 or very early in '71. Since that time I have not renewed.

Q You renewed that in '70 or '71?

A Signed a renewal note, yes, sir.

Q Was Mr. Bickel on this loan?

A No, he wasn't, to my knowledge.

Q Just you, yourself, on that Atoka note?

A Yes.

Q What did you do with the proceeds?

A I never got them.

Q You mean you went to a bank and you took out a loan in your name, is that right?

A That's correct.

Q And the bank authorized the issuance of moneys for the loan that you had negotiated; is that correct?

A I don't know anything about that. All I know is that I signed the note at Joe Boyd's request, that he had told the Atoka Bank, and I had no further tangible knowledge of what happened to the funds from that.

Q The bank never gave you the money?

A That's correct.

Q All the bank does is have you on their register or list of you owing them some money?

A That's correct.

Q Have you ever sued Joe Boyd or anybody else in order to take over that note?

A The answer to the question, was I sued or did I sue?

Q Did you ever sue Joe Boyd or anybody else indicating that they were the actual obligators on the note?

A No, sir.

Q As it stands to this day, as you sit there --

THE COURT: This is repetitious. You're saying the same thing over and over again.

MR. SEGAL: Very well, your Honor.

Q When was it, Doctor, that you first decided to cooperate with the Government?

A Approximately, I would say, a month ago. I don't recall the exact day of my first interview here.

Q A month ago?

A Approximately.

Q It is now October. Are you talking about August or September?

A I don't remember exactly what the date was. It was a little earlier than that, but I don't remember what the date was I originally came here for the personal interview.

Q At the time you testified before the grand jury were you cooperating with the Government?

A No.

Q That was in December?

A Yes, sir.

Q When you went into that grand jury did you tell the truth?

A Not all the way.

Q You told partially the truth; is that right?

A I don't recall specifics on it.

Q You were under oath at that point, were you not?

A Yes, sir.

Q Did you indicate at any time that you wanted to cooperate with the Government in exchange for immunity? Were you the one who brought that up?

A No, sir.

Q Who brought it up?

A The Government attorney made it rather clear to me that I was in a very bad position of false testimony.

Q Did he indicate to you that if you would co-operate with him that he might offer you immunity as to any crime you might have committed?

A I believe that the way it was put was simply that my position was pointed out to me and the immunity was not -- the word "cooperation" didn't enter the picture, as I understand it, but rather telling the truth did.

Q Did you take him up on that proposition immediately or after that offer?

A Yes, I did.

Q Did you ever testify in any forum after that, after you decided to cooperate with him?

A You mean under oath?

Q Yes.

A My recollection, this was the first time I have been under oath since that time.

Q When you went into the grand jury you tried to help yourself as much as possible; is that right?

A Yes.

Q It was to your interest to provide the grand jury with answers which would be of some benefit to you; is that right?

A I'm not sure that's the way I would put it. I would say that in some instances in the grand jury hearing I did give false testimony.

Q Is that because you felt it would be of some help to you?

A Perhaps. I'm not really clear on it. I think so. You testified beefore the Securities and Exchange Commission also; do you recall that?

A Yes.

Q Did you feel that when you testified falsely before the Securities and Exchange Commission that would be of some benefit to you?

A I suppose in addition to Joe's telling me not to talk about certain things that indirectly perhaps I did interpret it as something that would be helpful to me.

Q If we were to ascribe an order to those two things you just said, what would be No. 1? Would No. 1 be Dr. Chapel or would No. 1 be Joe Boyd?

A I suppose if that particular -- that particular choice has never really arisen, that I know of.

Q Is there any question as to what the choice would be?

MR. SUSSMAN: Your Honor --

THE COURT: Sustained.

Q Did you make such a choice, Doctor?

A No. I don't believe I can honestly say I did.

Q Doctor, you have indicated that you were told about certain items which you should stay away from, and, I believe, you listed three or four?

A Yes.

Q Yet, when you went in there you made a selection, did you not, about where you would tell the truth and where you would not tell the truth; is that right?

A In one instance, yes.

Q Is that because you were disobeying orders?

A No, sir. It was because I saw the examiner, Mr. Hewitt, already had the information he wanted on the list of 12, and I could see there was no point in my making any disavowel of it.

Q When the examine, Mr. Hewitt, asked you about the Atoka Bank, he named the Atoka Bank, did he not?

A Yes. I believe he did, according to my

recollection.

Q You knew he had the information about the Atoka Bank. Why didn't you make the same choice?

MR. SUSSMAN: Objection, your Honor.

THE COURT: Sustained.

Q You knew, did you not, when the question was asked to you that the Securities and Exchange Commission knew about the Atoka Bank; is that right?

MR. SUSSMAN: Objection, your Honor.

THE COURT: Sustained.

Q Doctor, do you recall testifying before the Securities and Exchange Commission on April 21, 1970? Not that you remember that precise date, but you did testify in April?

A Yes.

MR. SEGAL: This is Government Exhibit 3533. This is a document that has been provided to us by the Government.

Q Do you remember giving these answers to these questions, page 12:

"Q Do you personally or does EMS or any of its affiliates have bank accounts at the First Bank in Atoka, Oklahoma?

"A I don't, and to my knowledge none of the

affiliates do, with the possible exception of Dr. Knisely.

"Q You can't speak for other individuals but your companies don't have any accounts there?

"A No.

"Q Have You borrowed any mo ney from First Bank in Atoka?

"A No.

"Q Has EMS?

"A No."

Do you remember giving those answers to those questions?

A Yes.

Q It was the Securities and Exchange Commission at that occasion that raised the Atoka Bank?

A Yes.

Q Once they raised the Atoka Bank, tell me why it was that you lied?

A The reason that I lied was the same reason that I gave during my earlier testimony, because Joe asked me to.

Q Yet, when the Securities and Exchange Commission asked you about the 12 shareholders you found they had already the information and therefore you didn't lie?

A The point is that --

Q What is the point?

A The point is that in that testimony relative to the Atoka Bank hey did not give indication that they knew that I had a loan up there or that I had signed a note there as they did clearly with the list of 12 names.

Q Doctor, the fact that you had taken out a loan at the Atoka Bank, of what moment is that?

A Sir?

Q Of what moment is the fact that you took out a loan at the Atoka Bank?

A Moment?

Q Of what importance is it?

A I don't really know.

Q You don't know, do you?

A The only thing I have to go upon --

Q Do you or don't you know of what importance it is?

THE COURT: Importance to whom and for what?

MR. SEGAL: I will rephrase the question.

Q When you were asked about having a loan at the Atoka Bank at the Securities and Exchange Commission in April of 1970, was it of any importance to your having violated the law or not violated the law to the fact you were taking out a loan?

MR. SUSSMAN: Objection.

THE COURT: Sustained.

Q Did you have an attorney who represented you at that point?

A At the hearing?

Q Yes.

A Yes.

Q You had gotten an attorney after you had spoken with Mr. Bickel?

A That's correct.

Q Did you tell the attorney about the loan that had been made at the Atoka Bank?

A I don't recall that I did.

Q Do you recall whether you went over the subject matter of your testimony with that attorney?

A No. I don't recall that I did.

Q What function did the attorney perform for you on that day?

A In fact not too much.

Q The fact that you took an attorney at the time that Mr. Boyd said it was not necessary indicated you didn't quite agree with Mr. Boyd, did you?

A On that subject?

Q That's correct.

pgs Chapel - cross

A That would appear to be true. 874

Q But yet when you went in there it is your testimony, is it not, that you testified as you did because Mr. Boyd told you to; is that right?

A That's right.

Q In April of 1970, and again August of 1970, you submitted financial statements to banks, did you not, or at least you submitted financial statements bearing on thhose dates? I will give you those in a moment.

(Pause.)

Doctor, you have before you Exhibits 293 and 297. On each of these exhibits which are financial statements of yours there are insertions indicating that you own Select Enterprises stock: is that right?

A That's correct.

Q Do you remember the purpose for which these two financial statements were drawn up?

A 293, I don't have a recollection as to what specific purpose this was drawn up for.

Q Let's stay with that for just a moment, if we can. You put in that you have Select Enterprises stock of 10,000 shares at $12.

A That's what it says.

Q And Joe Boyd, did he tell you to put that in?

A In this particular statement I don't remember enough of the details about it. My recollection is a little hazy on this one.

Q Is it true, Doctor, that you were including the fact that ownership of Select stock even when Joe Boyd didn't tell you to do it?

A I can't answer the question because I don't recall.

Q You can't answer the question?

A I simply don't recall.

Q You can't answer the question yes either, can you?

A I don't recall.

Q Doctor, I take it that in the course of your skills you have not gotten to be a real estate man, have you?

A No, sir.

Q Nor a geologist or a geographer?

A No, sir.

Q Are you familiar at all with the California area called the Imperial Valley, I believe it is?

A Only to the extent that I recall having driven through it on one occasion.

Q Do you know how big it is and how far it

extends?

A I have a mental picture of a rather large area. That's about as much knowledge as I have.

Q Therefore when you heard the term "Imperial", it drew to mind that drive you might have taken through that placid, lovely countryside?

A That's true.

Q Doctor, would it make a difference to you as to whether or not in writing the release for Select, the description of the land in which Select was interested, was Imperial Valley or Imperial County?

A Would it make a difference to me?

Q Yes.

A I don't honestly think it would, because I am not familiar with Imperial County.

Q Isn't it true, Doctor, that the description of the land that you were after in that news release was Imperial County and not Imperial Valley?

A I'm afraid I don't know.

Q Doctor, you became somewhat of an expert in stock powers, did you not?

MR. SUSSMAN: Objection.

THE COURT: Sustained.

Q Doctor, did you ever have occasion to take stock

powers from your partner, Mr. Bickel, with regard to the EMS stock?

A Take stock powers from him?

Q That's right.

A With regard to his stock?

Q That's correct.

A As I recall, he did return his stock and, as I also recall, he included stock powers with it. I have a memory, however, on that partichlar subject.

Q Why did you want stock powers from your partner, Doctor?

A As a matter of fact, I didn't ask for them, nor did I ask for the stock. In turning over his stock to me was his idea and not mine.

Q Doctor, did you ever sell any Select stock to any of the shareholders of EMS?

A Any Select stock to any shareholders of EMS? Selling?

Q That's correct.

A No, sir.

Q Doctor, do you remember the list of ten which you say you gave to Mr. Boyd?

A A list of 10 or 12?

Q Which is it?

A 12 is what I coun ted.

Q Do you recall, or do you know, whether or not the individuals were actually, their names were actually, recorded on the stock transfer lists?

A I saw what was represented to me as a stock transfer list and it contained those names.

Q It indicated, did it not, that those individuals were the lawful or legal recipients, or at least the recipients of a given number of shares of stock as to each?

MR. SUSSMAN: Objection, your Honor.

THE COURT: Sustained.

Q You noted on that list, did you not, that each of those individuals was the registered owner of a certain number of shares?

A I noted their names on a stockholders' list which I was told was an official list of the stockholders. That's about as far as I can go because I don't know that much about stockholder lists.

Q Doctor, do you know whether you ever received those shares of stock for the stockholders?

A For the 12 that we are talking about? Whether I received them?

Q That's right.

A Yes, I did.

Q As a matter of fact, Doctor, didn't you turn over Exhibit 21 to the Government?

A Yes, I did turn it over to the Government.

Q They were in your possession, right?

A That's correct.

Q Doctor, does that mean that you never turned those certificates over to those individuals?

A Yes, sir.

Q Were you going to use them yourself?

A No, sir.

Q Why were you keeping them?

A For no particular reason except that it became quite obvious that they were not of any real value and so I simply kept them in my file.

Q Didn't you think it would clutter the files of these people?

THE COURT: Let's go on.

MR. SEGAL: Your Honor, I have no further questions.

THE COURT: Are there any other defendants who want to cross-examine?

- -

pgs Chapel -cross

CROSS EXAMINATION

BY MR. STOKAMER:

Q My name is Michael Stokamer and I represent Mr. Goodloe.

Mr. Chapel, you indicated before that you testified at the Securities and Exchange Commission on April 21, 1970; is that correct?

A That's correct.

Q Reading from page 12, I read you these questions and answers, and I want you to tell me if you remember answering them this way:

"Q How long have you known Eddie Goodloe?

"A I have met him just very recently. I'm not even sure which he is. It seems as though there are two Goodloes.

"Q Parker Goodloe and Ed Goodloe.

"A And I am pretty sure I have met them both, but I am not really clear which is who."

Were those the answers you gave to those questions?

A Yes, sir.

Q Were they truthful?

A Yes.

Q You also testified before the grand jury in

this District on December 19, 1974, correct?

A Yes.

Q I will do the same thing, reading from page 22. Will you listen to the questions and then to the answers:

"Q Did you ever meet Eddie Goodloe in that connection?"

That referred to New Mexico.

"A In connection with a mica mine?

"Q That's right.

"A No. I know him. I met him but not in connection with a mica mine.

"Q In connection with Select Enterprises?

"A I believe that I met him before that time, but I also have met him with respect to Select Enterprises as well.

"Q What was his contribution to Select Enterprises, as you knew it?

"A I didn't know it. Unfortunately I don't remember the time or the place, but I do recall having seen him with Boyd and just simply saying hello to him."

Do you remember those questions and those answers?

A Yes, I do.

Q Were they truthful?

A To the best of my recollection, yes.

MR. STOKAMER: Thank you very much.

No further questions.

THE COURT: Mr. Goldman?

MR. GOLDMAN: Thank you, your Honor.

CROSS EXAMIANTION

BY MR. GOLDMAN:

Q Dr. Chapel, my name is Lawrence Goldman. I am Mr. Ford's attorney.

Mr. Rhodes asked you a number of questions about the layout of the building that you went to for the March 26th meeting. Do you recall that?

A Yes, sir.

Q That was the building in which Mr. Ford had his office, is that correct?

A Yes

Q Do you recall how many offices there were in that building?

A As to a total number, no, sir.

Q Would you say there were more than four?

A If you count the reception area and the coffee area and the conference room, I'd say yes, there were four or more.

jgs Chapel - cross

Q How many private offices can you recall, other than those general areas?

A The only room that I recall clearly is the conference room.

Q When you entered that, was there a reception room there?

A When I entered the office or the conference room?

Q When you entered the building.

A Yes, I seem to recall some sort of a reception area.

Q Was there a secretarial area there aos.

A To the best of my recollection, yes.

Q There also was a secretary there when you got in?

A Was there a secretary there? I don't recall whether there was one.

Q Do you recall if there was a typewriter in the desk for a secretary?

A Yes, I'm sure there was a typewriter.

Q Do you remember where you went from that reception-secretarial area, how you got to the conference room?

A As I recall, it was down a hallway.

jgs Chapel - cross

Q Was that a hallway in the middle of the building, a central corridor?

A I have not a 100 per cent -- I have a reasonably clear recollection that there is a hallway and there are, or was, I assume the building still exists, doors on both sides.

Q But the would be off both sides of that central corridor?

A I'm not sure I went into all of them, but I suppose it is a safe assumption.

Q Do you recall how you left that building?

A How I left it?

Q Yes.

A No, I don't.

Q Do you remember whether it was the same way you went in?

A I really don't remember. That would be an assumption if I answered that, because I really don't recall.

Q Was that secretarial-reception area open, sir? Do you understand my question?

A I think I do, yes. My mental picture is somewhat hazy on it, but I would say, with that in mind, it seems to me as though it was open, yes, to some degree.

A 406

jgs Chapel - cross

Q And was there access to that area from the central corridor?

A Yes, I recall.

Q Now, sir, you aid you recall Mr. Ford was at that board of directors meeting.

A Yes.

Q Do you recall whether he walked in and out a number of times?

A No.

Q Do you recall when he left that meeting?

A No, I don't recall.

Q Do you recall whether or not he left it before it terminated?

A Before it terminated?

Q Yeds.

A No, sir, I don't.

Q Let me ask you if you recall Mr. Ford excusing himself and saying he had to attend a play rehearsal.

A No. I really don't. There is just a very vague memory in my mind of something along that line, but it is not at all clear.

MR. GOLDMAN: No further questions.

Thank you, Doctor.

THE COURT: Mr. Krieger?

CROSS EXAMINATION

BY MR. KRIEGER:

Q Dr. Chapel, we've met already, haven't we?

A Yes, sir.

Q And we met really for the first time awt the lunch break, is that not correct?

A That's correct.

Q And we spoke for a few moments together, is that right?

A Yes, sir.

Q And, Dr. Chapel, we spoke about a couple of things, didn't we?

A Yes.

Q And you know that I do represent Selwyn Weber.

A Yes.

Q Now, Doctor, in regard to this meeting on or about March 26, 1970 at Mr. Ford's office, about which you've given testimony, I think on your direct examination you characterized it as a board meeting, is that correct?

A Yes, sir.

Q Now, it is a fact, is it not, Doctor, that as of, well, even now you cannot state of your own knowledge who the members of the board of directors of Select Enterprises were -- who the members were on March 26,

1970?

A That will be correct, yes.

Q And you don't know whether the meeting was attended by people who were not members of the board, is that correct?

A Myself would be the only one that -- as I recall my knowledge of who was what at that time, the only one I could be really sure of is myself.

Q And you were not.

A And I was not a board member.

Q Now, at this meeting, you told us that there were people who really delivered presentations concerning certain business ventures, is that right?

A Yes.

Q And whoever delivered a presentation was describing whatever composed or comprised this particular business venture, is that correct?

A That's correct.

Q The assets as well as the liabilities.

A Yes.

Q And also presented what the prospects of the business venture was.

A As I recall, yes, that is right.

Q And it is also your recollection, is it not,

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that you don't know who presented what?

A That's true. I don't recall who presented what.

Q That is correct.

A At one time I knew, I'm sure.

Q Well, we can only have your recollection now, and your recollection now is that you do not recall who presented what.

A That is correct.

Q Is it your recollection, as you testify here now, that you do not recall Selwyn Weber presenting anything?

A I do not ercall Selwyn Weber or anyone else that I recall having been there presenting a specific subject except, again, myself.

Q Do you have a recollection of Selwyn Weber presenting anything?

A No, I don't.

Q Now, is it your recollection as you sit here today that you can picture in your mind's eye Selwyn Weber at that meeting?

A As I sit here today, that's my recollection, yes.

Q Can you describe for us this room in which the

meeting took place?

A I have a picture of a relatively large room. I'm not sure that I could say how large. But I also have a picture of a conference table with a number of chairs around it.

Q People sitting in the chairs?

A People sitting in the chairs.

THE COURT: Let him answer the question before --

MR. KRIEGER: I thought he was through, your Honor.

A (Continuing) And that would be my recollection of that room.

Q And can you place in your mind's eye where you see Selwyn Weber in that room at that conference table, if at all?

A I'm afraid that I can't, because I'm not able, from my memory of the situation at this stage of the game, as to place anyone as to where they were sitting in particular.

Q And is it not a fact that you cannot recall identities of people who were there?

A That's true.

Q Can you tell us approximately how many people were there?

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A Approximately eight or ten.

Q And certainly, of the eight or ten who were there, so far as your recollection can tell us, there were people who absolutely did not participate in thatmeeting except for their physical presence.

A I believe that, according to my recollection, would be a true statement.

Q Thank you.

Now, I would like to move ahead to approximately April 20, 1970. You do have a recollection of April 21, 1970, do you not?

A Yes.

Q That's the day on which you appeared before an SEC Examiner, correct?

A That's right.

Q And you told us in your direct testimony about a meeting that you had with Mr. Boyd and Mr. Weber the day before, is that correct?

A That's correct.

Q And was that at the Warren Hotel?

A No. That was at the Worth Hotel.

Q The Worth Hotel. And did you have an appointment to meet with either MR. Boyd or Mr. Weber on that occasion at that time?

A As I recall the invitation, or appointment if you prefer, this was more in the form of an invitation from Joe Boyd to join him and Selwyn Weber at the Worth Hotel.

Q And you did.

A And I did.

Q And did you have a drink? Did you have lunch?

A It was later in the day and I don't recall having any food. As a matter of fact, I don't have a clear recollection of any drinks.

Q You do have a clear recollection, do you not, of a social conversation?

A Not the content necessarily, but that there was some social conversation.

Q And in that social conversation you participated, Mr. Boyd participated, and Mr. Weber participated, is that right?

A That's my recollection, yes, sir.

Q And then you described to us, on your direct examination, another conversation which was for all intents and purposes between yourself and Mr. Boyd, is that correct?

MR. SUSSMAN: Objection to form.

THE COURT: Yes. You can leave all the

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"intents and purposes" out and just reframe the question properly.

MR. KRIEGER: Yes, your Honor.

Q On your direct testimony did you not relate two different conversations?

A Yes.

Q One was the social conversation, which you have already described on cross-examination, correct?

A Yes, sir.

Q And the other was a conversation between yourself and Mr. Boyd.

A That's essentially the case.

Q And in that second conversation, if I may characterize it as that, Mr. Weber did not participate; is that not correct?

A If you mean did he contribute anything to the conversation, it is correct. I just want to clarify it, your understanding of the word "participation".

Q Well, sir, at approximately one o'clock you and I stood at this edge of the jury rail (indicating), is that correct?

THE COURT: Just a minute, Mr. Krieger. I want to call to your attention that if this is designed to elicit information which would cause you to become a

witness here --

MR. KRIEGER: No, your Honor.

THE COURT: -- that that would mean that you would have to retire from the case.

MR. KRIEGER: I am well aware of that, your Honor.

THE COURT: Then go ahead.

MR. KRIEGER: And I do not intend to go into that area.

A Perhaps I can --

Q Please let me ask just one or two questions in this regard, and I think that will be it.

You and I stood along this jury rail and spoke, isn't that correct?

A Yes.

Q And at one time during the conversation did Mr. Sussman approach us?

A I believe he did, yes.

Q And then Mr. Sussman, did he not, stepped away from us, correct?

A Right.

Q Was Mr. Sussman about four or five feet away from us?

A As I recall the situation, yes.

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Q And he did not participate In o ur conversation, did he?

A At that point, that's true, he did not.

Q Now, as you sit here as a witness, sir, can you tell us, in so far as that second conversation is concerned, what Mr. Weber overheard?

A Hardly.

MR. KRIEGER: Thank you.

THE COURT: Mr. Richman?

MR. RICHMAN: I have only one question.

May I ask it from here, your Honor?

THE COURT: Yes.

CROSS EXAMINATION

BY MR. RICHMAN:

Q Doctor, do you know my client, Mr. Titlow?

A Mr. Ditlow?

Q Titlow, T-i-t-l-o-w.

Stand up, Mr. Titlow.

A I don't believe that we've met.

MR. RICHMAN: Thank you, Doctor.

THE COURT: Mr. Ehrlich?

MR. EHRLICH: Yes, your Honor.

Is this an appropriate time for our afternoon recess, your Honor?

MR. EHRLICH: Very well.

THE COURT: We are going to try and conclude early this afternoon, so we are going to go straight through.

CROSS EXAMINATION

BY MR. EHRLICH:

Q Dr. Chapel, I represent Dr. Mullenax. You identified Dr. Mullenax earlier this morning, is that not so?

A That's true.

Q That wasn't difficult for you, was it?

A Not at all.

Q You've known Dr. Mullenax for 17, 18 years?

A I would say that would be about right, yes.

Q And during that time you've known him in both a professional and a social capacity?

Let me break it down: first a professional capacity?

A Yes.

Q And also a social capacity?

A Yes.

Q Was and is Dr. Mullenax a friend of yours?

A I consider him so, yes.

Q Thank you.

Now, Dr. Mullenax was aware, let's say during the course of 1970, that you were president of one of the larger chiropractice colleges in America, is that not so?

A Not in 1970, no, sir.

Q What year was that?

A 1967.

Q Yes. But he knew in 1970 that you at one time were president.

A Yes. I misunderstood the question.

Q May I have the name of that college, please?

A Lincoln Chiropractic College.

Q And Dr. Mullenax was also aware, during the year 1970, that you were the director of the Parker Research Foundation, is that not correct?

A Director? No. My capacity there was executive vice-president.

Q Executive vice-president. And were you connected with the Parker Chiropractice Institute?

A There is no such company that I know of by that name. It is called the Parker Chiropractice Research Foundation.

Q Right. And your capacity there, please?

A Executive vice-president.

Q Now, could you please tell us, Dr. Chapel,

whether, during the years of your association, Dr. Mullenax has treated you with respect?

A I would say so, yes.

Q And you have treated Dr. Mullenax with respect in a likewise manner?

A Yes.

Q Now let me point your attention to April and May 1970. During that period of time you were in a difficult financial condition, is that not so?

A That's true.

Q You were hard pressed for liquid cash.

A Right.

Q Now, in August 1970, did you find it necessary to sell your boat and also to withdraw the money from your savings account to pay loans outstawnding at banks?

A Yes, I did. I don't recall that it was August, but that -- the timing is a little off, but I did --

Q But you found it necessary, obviously, to do so.

A Yes.

Q You used your boat often? Did you use it in business and in your personal life?

A No, sir. It was strictly pleasure.

Q Pleasure. So now we come to April or May 1970, where you are sitting in a room with Mr. Boyd, Dr. Mullenax

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and yourself, and you expressed to both these individuals that you needed money very desperately; is that not so?

A That's correct.

Q Immediately subsequent to that time, did you go with Dr. Mullenax to his bank and did he at that time give you a check in the amount of $4000?

A I received a check in the amount of $4000 from him.

Q When and where?

A My recollection as to the exact time that it was handed into my hand is -- I'm a little --

Q I don't want to go --

MR. SUSSMAN: Objection. Let the witness finish answering.

MR. EHRLICH: Sorry. I thought he had.

A My recollection of this event is that I met Dr. Mullenax in Wichita. I'm uncertain as to whether he picked me up at the airport or not. But, in any event, I recall driving to his home, and to the best of my recollection I believe that the check was written there, and then subsequent to that we went to the bank.

Q Now, Dr. Chapel, was this check in the amount of $4000 given by Dr. Mullenax to you and received by you as a personal loan?

A As a personal loan -- as far as my receipt of it is concerned --

Q Yes?

A -- I can only explain --

Q Fine. Let us limit ourselves to that. Did you receive it as a personal loan?

A I considered it as a personal loan, yes.

Q Thank you very much.

A Three thousand of the four, at least.

Q Let's clear that up. Dr. Mullenax gave you $4000.

A Yes, sir.

Q Did you ask Dr. Mullenax for $4000?

A The best of my recollection is that rather than me asking him for it, that in the presence of the three of us, Joe Boyd, myself and Dr. Mullenax, when I explained my financial problems, Joe Boyd told Dr. Mullenax to provide me with this money, and Dr. Mullenax agreed to do so.

Q This money being what amount of money?

A $4000.

Q $4000. Can you tell the members of this jury, without any equivocation --

THE COURT: Will you start your question all

over again, please?

MR. EHRLICH: Yes, your Honor.

THE COURT: Start your question all over again. And never mind the characterizations.

Q When Dr. Mullenax wrote the check out for you in the amount of $4000, did you tell them what use you were going to make of those funds?

A My recollection is that I did not. I can't be certain, other than to take care of my own financial problems, of course, which was pretty obvious.

Q Thank you very much.

Now, one last thing in connection with that $4000 check. About what period of time elapsed between the meeting between Boyd, Dr. Mullenax and yourself and the time that you went to Wichita and received the check from Dr. Mullenax?

A My recollection of that is that it was a very short period of time.

Q A short period of time.

A Yes. At the very most, overnight.

Q Dr. Chapel, I hand you Government's Exhibit 295. After you received Dr. Mullenax's check, was it the same day that you wired $3000 to your own bank, the Southwest National Bank of Fort Worth, Texas?

THE COURT: That was the East Side, not the Southwest.

MR. EHRLICH: Your Honor, it says "Received from the Southwest."

THE COURT: All right. Go ahead.

Q Was it the same day that you wired the money to your account at the Southwest National Bank of Fort Worth, Texas?

A Well, as I recall the sequence of events, at the East Side National Bank in Wichita I presented this check and instructed them to wire $3000 to my bank.

Q Yes.

A And I took 1000 in cash, and I assume that the bank wired it promptly and it arrived at my bank promptly. That's the only way I can answer that.

Q Now looking at Government's Exhibit 295 in evidence, Dr. Chapel, can you testify that the meeting between Boyd, Dr. Mullenax and yourself and your receipt of the check from Dr. Mullenax was on or about May 18, 1970?

A On or about, yes.

Q Thank you.

Now, did you know, on or about that date, that Dr. Mullenax had an association with Donald Rouse?

A According to my memory, yes, I did know it at

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that time.

Q And did you know whether it was in connection with an insurance company?

A Yes, I believe I knew that.

Q Did you know that Select Enterprises was interested in the insurance company?

A Yes, I believe I did.

Q And do you know whether Donald Rouse had received 60,000 shares of Select Enterprises stock?

A Is that the end of the question?

Q Yes.

A Do I know that or did I know it at that time?

Q Did you know that Mr. Rouse had received 60,000 shares of Select Enterprises stock?

A I have no clear recollection of knowing that Donald Rouse received that number of stocks.

Q Do you know whether he received any stock from Select?

A I have a rather unclear recollection of his having received some.

MR. SEGAL: Objection, your Honor, and I ask that that be stricken.

THE COURT: Motion denied.

Q Now, with respect to Dr. Mullenax, do you know

whether Dr. Mullenax received any stock from Select Enterprises?

A I believe that my answer to that almost has to be the same as it would be in regard to Rouse, which is that my memory is unclear on quantities but I think that I did know that he did receive some.

Q And do you know whether that stock which he received was pledted by him at certain banks?

A Do I know that?

Q Yes.

A I can't testify to that, because I have no personal knowledge of it.

Q On May 18, 1970, at about the time you received this $4000 check from Mr. Mullenax, did he tell youthat he had just secured the presidency of the Continental General Life Insurarance Company?

A On that date?

Q At or about that time, did you know?

A It really doesn't matter, because I don't have a recollection of knowing that he had secured the presidency of that insurance company.

Q With respect to Government Exhibit 296-A, Dr. Chapel, were you anything more than a courier in traveling to Wichita, picking up that check and taking it -- I

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withdraw that.

After you picked up that check where was it taken?

A To the bank in Wichita, the East Side National Bank.

THE COURT: I assume that you are referring to 296-A.

MR. EHRLICH: Yes, your Honor.

Q Let me get that clear. Where did you pick up the check?

A To the best of my recollection onthe subject, the check was given to me, as I recall, in Dallas, or, I should say, Irving, I suppose, and I took the check, as I recall, to Wichita, where I met Mrs. Mullenax.

THE COURT: Irving is a suburb of Dallas?

THE WITNESS: Yes, sir, Irving is a suburb of Dallas.

That's my best recollection as to that half of the trip.

Q After you were given the check, what did you do with it?

A You mean where did I put it? In my pocket.

Q You said you had received the check in Texas and you traveled to Wichita. What did you do with the

checkin Wichita?

A Oh. I met Mrs. Mullenax at the bank and she made it possible for me to get a certified check in place of it. She identified me with the bank personnel so that they would do that for me, which I doubt they would have done had I not had some identification.

Then I took the certified check, went back to the Dallas area, and gave it to Mr. Boyd.

Q Do you know the purpose of the check?

A I did not know the purpose of the check, no.

Q In fact, your function was more or less that of a courier.

A I'd say that that probably describes that one quite well, yes, sir.

Q Now, Dr. Chapel, would you please look at Government's Exhibit 293.

With respect to the Select Enterprises, Inc. stock which you reported on the personal financial statement as 10,000 shares at a $12 quote, did you obtain that quote from a broker in Dallas, Texas?

A My recollection is that that's where it came from.

Q And when you reported the 10,000 shares at $12, $120,000, was that a proper representation?

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MR. SUSSMAN: Objection.

THE COURT: Sustained.

Q Was it your intent to mislead when you placed on your personal financial statement "10,000 shares at $12, $120,000"?

A Was it my intent to mislead?

Q Right.

A I'm afraid that I've got to say I really don't know, with respect to this particular financial statement, because I can't recall its purpose.

Q Well, let me ask you this, then, Dr. Chapel. You recall the broker obtained a quote at $12. Now, was it your opinion that 10,000 shares of Select Enterprises stock was worth $120,000?

MR. SUSSMAN: Objection.

THE COURT: Sustained.

Q Dr. Chapel, was this value of $120,000 reflected on Government's Exhibit 293 in accordance with what the broker in Dallas, Texas told you?

A May I explain? Perhaps it will help.

Q Yes.

A The only recollection I have as to the source of that $12 quote is one where Mr. Michael Bickel and myself walked out of 1 Main Place and down the street a

couple of blocks to a brokerage place where a broker that he happened to know personally worked.

And we asked for a quote there, as I recall, and I'm relatively clear on this, though not a hundred per cent, that that is the time and place that we got this $12 quote.

And at the moment of receiving the quote, I felt, by virtue of the quote, that this stock had this value.

Now, I cannot say that this happened on April 28, however, because I don't recall when it happened.

Q But the fact is that when you received the $12 quote you felt it was totally proper to report the value of 10,000 shares at 120,000?

MR. SUSSMAN: Objection.

THE COURT: Sustained.

Q Dr. Chapel, you testified about a meeting at the board of directors of Select Enterprises that took place on March 26, 1970. I show you what has been marked as Defendant Mullenax Exhibit E for identification.

Can you identify those documents?

A I don't recall --

MR. EHRLICH: Your Honor, can Dr. Chapel only answer yes or no to this question?

THE COURT: He started to say that he doesn't recall. You didn't let him answer.

A I don't recall having seen these in this form.

Q Do you recognize the signature on the bottom of the page?

A The name is Howard Hanson , but I do not recognize the signature. I don't know that I have ever seen it.

Q Do you remember what transpired on March 26, 1970?

A I believe that was the date of the directors'

meeting?

What transpired?

Q Yes or no.

A Yes. To the best of my recollection I have testified to that.

Q I show you Defendant Mullenax Exhibit C for identification. By looking at that, Dr. Chapel, can you state whether or not that particular transaction occurred on or about March 26, 1970?

A To the very best of my recollection Donald E. Rouse, who is mentioned in this document, was not at that board of directors' meeting and this would be --

Q I am not asking you whether or not he was present. I am asking you whether or not the transaction reflected by that document occurred at the meeting?

A I don't recall it.

MR. EHRLICH: I have no further questions.

THE COURT: Mr. Lesser?

CROSS EXAMINATION

BY MR. LESSER:

Q Dr. Chapel, my name is Mr. Lesser. I represent Dr. Knisely.

How long do you know Dr. Knisely?

A A long time. Back, as I recall, the late '50s.

That's when I met him.

Q Doctor, you testified to a loan at the Texas Bank & Trust Company of Dallas some time in February of 1970?

A I missed the last part.

Q Some time in February of 1970. I think it was February 20th, 1970. That was a loan for $15,400.

Do you recall that?

A Yes, I do.

Q I believe you testified that you and Mr. Bickel signed a personal note to the bank for that loan?

A We signed a note, yes.

Q As collateral there was 50,000 shares of stock of United American Industries that belonged to Dr. Knisely?

A Yes. That's correct.

Q Did Dr. Knisely get any part of the proceeds of that note?

A Of the note?

Q Of the loan.

A Not to my knowledge he didn't, no.

Q Were you examined by Mr. MacDonald before the grand jury in this building on December 19th, 1974?

A Yes, sir.

Q You testified there, did you not?

A Yes.

Q I call your attention to some questions and answers that you were asked on page 25, line 9. Did you give these answers to these questions:

"Q Finally, do you know Mr. Knisely?

"A Yes.

"Q Can you tell us what his role was with respect to Select Enterprises?

"A Well, he, on wherever I saw a sheet of paper of any kind with his name of the president on it, it always said Dr. Mike Knisely, president, so I assumed he was the president of the corporation.

"However, I -- his part, the part that he played, as far as I can tell, was an inactive one, because I don't remember ever seeing him in the various Select offices or I don't believe I ever saw him with Joe Boyd in regard to Select Enterprises."

Do you remember giving those answers to those Questions?

A Yes, I do.

Q Was that the true situation?

A It is essentially true. However, may I make a slight qualificatin?

Q Answer the question.

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THE COURT: What is the part that is not essentially true?

THE WITNESS: The part I would change would be relative to the fact that I did in fact see him at the Abilene meeting.

Q He didn't participate in any discussion, did he?

A I don't recall him participating at all.

MR. LESSER: That's all. Thank you.

MR. BERGER: No questions, your Honor.

MR. DULSKY: No questions, your Honor.

MR. CONCANNON: No questions, your Honor.

MR. ROONEY: No questions, your Honor.

CROSS EXAMINATION

BY MR. BRODERICK:

Q Mr. Chapel, I represent Michael Gardner. You mentioned that you prepared some sort of newsletter; is that correct?

A Yes.

Q That is Exhibit 4-A?

A I have forgotten the exhibit number.

Q Where did you prepare that newsletter?

A Where?

Q Yes.

A My best recollection is that it was in Room 2717

of the 1 Main Place Building in Dallas, Texas.

Q When was that prepared?

A On or about the end of March.

Q This was some sort of sales situation, was it not?

MR. SUSSMAN: Objection, your Honor.

THE COURT: Whatever it is, it speaks for itself.

You are talking about where the witness went down and identified the source of the paragraphs?

MR. BRODERICK: That may have been it.

THE COURT: Are we talking about the same exhibit?

MR. SUSSMAN: I believe it is the exhibit that your Honor has in his hand.

THE COURT: This is my copy.

MR. BRODERICK: Yes, this is the news release.

THE COURT: That's Exhibit 4-A.

BY MR. BRODERICK:

Q I show you this exhibit, 4-A. You had helped prepare that; is that correct?

A That's correct.

Q This was some sort of a promotion, was it not, for Select Enterprise?

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MR. SEGAL: Objection.

THE COURT: Sustained.

Q Do you consider yourself a good salesman?

MR. SEGAL: Objection.

THE COURT: We will allow that.

Do you think you are a good salesman?

THE WITNESS: I think I am, yes, sir, your Honor.

Q You think you are?

A Yes.

Q You had prepared that news release; is that correct?

A That's correct.

Q Did Mr. Boyd ever mention to you about any public relations firm in New York?

A Not that I can recall.

Q Did you ever hear the name Michael Gardner?

A It does not sound familiar.

MR. BRODERICK: Thank you very much.

THE COURT: Is there any redirect examination?

MR. SUSSMAN: Very brief, your Honor.

REDIRECT EXAMINATION

BY MR. SUSSMAN:

Q Dr. Chapel, Mr. Segal ask you about the 3-to-1

ratio for which Select was going to acquire EMS and the $15 per share that Mr. Boyd had told you Select stock was worth. Do you remember that?

In the course of any of those conversations did Mr. Boyd mention to you anything about discussions with Alan Segal and the making of that $15 market in Select stock in New York?

MR. SEGAL: Objection.

THE COURT: Overruled.

MR. SEGAL: As to form.

THE COURT: Overruled.

A I don't recall too many details but the name Alan Segal is a familiar one to me.

THE COURT: He is asking you something specific. He wants to know whether in the course of the 3-to-1 exchange ratio, whether there was any reference to Alan Segal -- not lawyer Segal -- a witness who was here, making a market in New York.

A I don't recall any such explanation or conversation.

Q Did Mr. Boyd mention anything to you during his 3-to-1, $15 discussions about the 100,000 shares of Select stock having been delivered to Alan Segal in New York to be used in the making of that market?

pgs Chapel - redirect

MR. SEGAL: Objection.

MR. BERGER: Objection.

THE COURT: Overruled.

A I don't recall that part of the disc ussion.

Q Mr. Segal also asked you about the 10,000 shares of Select of which you kept 3000. He asked you if you had any proof that the remaining 7000 shares had stayed with Mr. Boyd. Do you remember those questions?

A Yes, sir.

Q Directing your attention to Government Exhibit 286 in evidence, if you will look in the left part of that exhibit, about two-thirds of the way down, you will see the words "Stock (in vault)."

Do you see those words?

A Yes, sir.

Q Do you know who put those words there?

MR. SEGAL: Objection, your Honor. I don't know that that follows from the question that was asked by Mr. Sussman.

THE COURT: It is a perfectly proper question. Overruled.

Do you know who puts those words there?

A No, sir, I don't.

Q Do you know anything about that stock?

A No, sir, I don't.

MR. SUSSMAN: No further redirect examination, your Honor.

THE COURT: You are excused.

(Witness excused.)

THE COURT: Ladies and gentlemen, the jury is excused for the weekend. We will resume again on Monday morning at 10.15. There is some other court business at 10 o'clock so you will have a small amount of leeway in getting here.

Again, let me remind you that the evidence is being received slowly. Don't make up your minds. Keep an open mind until you have heard al of the proof and the instructions of the Court as to what the law is. I hope you all have a pleasant restful weekend and return refreshed on Monday morning to resume your duties.

Good night.

(Time noted: 4.45 p.m.)

- -

DIRECT EXAMINATION

BY MR. MacDONALD:

Q Tell the jury your age, your address, and your occupation?

A I'm 39 years old. I reside at Box 247 Idabel, Oklahoma. I am in the trucking business.

Q Give us your educational background through the highest level attained in your business experience thereafter?

A Well, I went to school at Idalou High School in Idalou, Texas, through high school, and one year of college at Texas.

Q Thereafter did you have some business experience

A Yes, sir. I got married after I left college and went farming with my father in Idalou, Texas.

Q What year was that?

A That was in 1956 that I started farming with my father. I farmed up until 1961 and then I started ranching down there in Clarksville until about 1967; I had some cattle.

In 1968 the bank failed at Lorenzo, Texas that I had been doing business with.

Q What happened to you thereafter?

A After the bank failed I was indicted and con-

victed on one count, aiding and abetting.

Q What happened to the bank president with you?

A Over-extension of legal loans. Over my legal loan limit.

Q Did you receive a sentence of imprisonment from the Court?

A I did. Two years and $5000 fine.

Q When did you go to trial with respect to the charges in that indictment?

A Some time in October when I was convicted.

Q When?

A 1969.

Q Directing your attention to the period shortly after that trial, did you have occasion to have a conversation with Mr. Joe Truman Boyd in Lubbock, Texas?

A Yes, I did.

Q Would you tell the jury, first of all, if you can identify Mr. Boyd here in court?

A Yes, sir, I can. That's Mr. Boyd right there (indicating).

MR. SEGAL: The identification is acknowledged, your Honor.

Q Had you known Mr. Boyd previous to the conversation you are about to describe for us?

A I had met Mr. Boyd on one or two occasions by that time.

Q Directing your attention to October of 1969, tell the jury where the conversation was, who was present. and who said what?

A Mr. Boyd came by my apartment on either a Saturday or Sunday evening, and Mr. Hale, Mr. Sam Hale, was there and me and Mr. Boyd, and me and Mr. Boyd was talking about -- he had some trucks or something up there that he was seeing about, and me and him was talking about a shell corporation and what could be done with one, and how a man could make some money with one.

He asked me if I knew about any and i told him I had talked to Mr. Bernie Acton, which was out in California, that I had known for a couple of years, and I had been out to see Mr. Acton, and he had a company that was over the counter stock, and that he might know where we could possibly get one; that was about all the conversa- that was there on that day.

Q Do you recall if there was a name to the corporation that Mr. Acton had, as you describe?

A Pioneer Development Corporation.

Q Did the conversation also include any reference to Advance Resources, Inc.?

A I told Mr. Boyd about my conviction, and that I had -- me and Mr. Acton had wentout into Phoenix, Arizona with Mr. Sprenger, and me and Mr. Acton and Mr. Cassel had got a corporation called Advance Resources, and after that, about a two-month period -- then I was convicted and sentenced and they requested that I get out as an officer, and for my stock, I would get my shares of stock but it would be put in anther fellow's name.

Q What happened next after this conversation which you described?

A Well, after the conversation with Mr. Boyd at that time, he left and then I talked to Mr. Acton on the telephone and he told me about good possibilities of finding a shell, and that we talked later, different discussions or something, and --

Q Did there come a time when you saw Mr. Boyd once again?

A Yes. Mr. Boyd came to my office again in Lubbock, Texas and we talked about, and he said that he had found a couple of shells, or three shells, some in Salt Lake City and also one in Reno. The shell corporations that were in Salt Lake City, some of them was already traded penny ante stock, and the one in Reno was an old 1915 shell corporation, grandpappy class, that had all the stock intact

Q Was there anything further in that conversation?

A We talked it over for a little while and he said, of course, that the one that was in Salt Lake City -- I don't remember the price he gave me for them, but he didn't know what the price was. In Reno he thought that was $40,000. He said the one in Reno looked like it would be good if we could get a hold of it.

Q Directing your attention to on or about January 5, 1970, did you have occasion to attend a meeting with Mr. Acton and Mr. Boyd in Atoka, Oklahoma? If so, tell us what happened on that occasion?

A About two days before that Mr. Boyd had called me and told me that we could borrow some money at the bank at Atoka on some stock, and as I was definitely broke and he was broke, and we needed money badly, I called Mr. Acton on the phone and asked him if we could borrow some of his stock, to borrow some money on it. Mr. Acton said he would and he, in turn, flew down to Lubbock, Texas and met me in Lubbock, Texas and we drove down to the ranch in Atoka and we met Mr. Boyd, and me and Mr. Boyd and Mr. Acton and Mr. Bruce Baker, we went on to Atoka and took the stock in to Mr. Howardard Brookshire at the Atoka Bank. Mr. Brookshire told us at that time that he would have to check the stock out, check the transfer agent and see if it

was all right, and he would let us know.

Q What happened next?

A We drove back, me and Mr. Acton and Mr. Baker and Mr. Boyd, to Dallas. On that occasion Mr. Boyd and Mr. Acton and me was talking, and Mr. Boyd asked Mr. Acton if there was a possibility that if we got a hold of a shell who was making his market for him in Pioneer and who was his broker. I don't know whether I asked him or Mr. Boyd asked him. I asked him if there was a possibility of Mr. Alan Segal talking to us about making a market in the shell corporation if we got a hold of it, and Mr. Acton said there was, and he would then be willing to set up an appointment with Mr. Segal.

Q How far is Atoka, Oklahoma from Dallas, Texas?

A I imagine about 170 miles.

Q What happened next in respect of Mr. Boyd and your meetings with him?

A Well, we went back home to Dallas, and I went on back to Lubbock, and Mr. Acton flew back to California, and on the next occasion, which was a couple of days later, Mr. Boyd called me and told me that everything was read at the bank in Atoka, and me and Mr. Baker drove down to Atoka and went into the bank and signed a note for $25,000 on the stock loan, and I told Mr. Brookshire that I would

like to have all cash, and he said that he had $14,000, and he would give me $14,000 cash and the balance of $10,000 in $1000 cashier checks, and then I left $1000 in the account there.

Then we drove back from the bank there to Lubbock, Texas where I put the cash in the First National Bank in Lubbock, Texas in a safe-deposit box.

I believe it was the next day that I gave Mr. Boyd $6500 in cash and $1000 cashier's check on the First National Bank, and I told him to draw a draft or a check on the $1000 that was in Atoka.

Q I neglected at the beginning of your examination to ask you if you are a defendant in this case and whether you previously pled guilty to one or more counts of the indictment in this case?

A Yes, sir. I am a defendant. I have pled guilty to one count.

Q Do you know the maximum prison term which Judge Pollack may impose with respect to your conviction on that count?

A Yes, sir, I do.

Q What is that?

A Five years and $10,000 fine.

Q Do you expect at the time of the sentence

that the remaining counts of the indictment will be dismissed on motion of the Government?

A Yes, sir, I do.

Q Have you heretofore executed in the presence of your attorney a written agreement in respect of your testifying here today?

A Yes, sir, I have.

Q Would you look at your left, please, at the document, and refer to the exhibit tag. Tell us if you can identify that document. What is the number on the little white tag?

A 365.

Q What is that?

A That's the agreement I signed with you.

MR. MacDONALD: We offer the exhibit.

MR. CONCANNON: I would object to that, at least to Paragraph 6, and Paragraph 4 of that same document.

THE COURT: Is there anything else?

MR. KRIEGER: I would ask the Court instruct the jury concerning the effect of the plea of guilty interposed by this witness.

THE COURT: At the appropriate time.

MR. EHRLICH: Your Honor, I object to the document as having no probative worth and if the Court seems fit

to admit it, I would particularly note my objections to having Paragraphs 4, 5, and 6 submitted to the jury.

THE COURT: We will leave it marked for identification for the present time in view of the objections.

MR. MacDONALD: We would have no objection to excising the last numbered paragraph. We wou'd press our offer of the previous paragraphs, and during the recess perhaps we would excise the last numbered paragraph in light of the objections.

MR. ROONEY: I object even with that excision on the Government's direct examination of this witness.

THE COURT: Leave it marked for identification for the present and we will see what develops on cross-examination.

BY MR. MacDONALD:

Q Directing your attention to the next numbered exhibit, Exhibit 366.

A Yes, sir?

Q Can you identify the checks, the Xerox copies which comprise that exhibit?

A Those are the $1000 cashier checks that I received from Mr. Brookshire.

Q Tell us what you did with the originals of those checks?

A I took them to the First National Bank and had them cashed and put the cash in a safe-deposit box, all except --

Q Look at the endorsements on the intermediary pages. I ask you if you can recognize any of the signatures in addition to your own?

A Yes. I am mistaken. These are the ones I gave to Mr. Clegg.

About two days later after I gave money to Mr. Boyd I met Mr. Acton in Los Angeles, California and he had a Mr. Clegg with him, and I gave cashier's checks, $7000, to Mr. Mike Clegg that I had got from the Atoka Bank.

Q Where did you go next after delivering the checks as you described?

A I met Mr. Acton and he and me went to Reno, Nevada to meet with Mr. Boyd and Mr. Segal.

Q Tell us where the meeting occurred and what was discussed in your presence, who said what?

A The meeting occurred in Reno, but I can't tell you the name of the place.

Q Who was present?

A Mr. Boyd, Mr. Segal, Mr. Acton, and I was there.

Mr. Boyd was done talking to Mr. Segal when I got there and there were documents on the table there, and

A 449

he was talking to Mr. Segal about making a market for - Select Enterprises, and Mr. Segal said that there was a possibility of making a market for it.

He had to have a balance sheet, certified financial statements, and he had to have all the properties, deeds, and everything intact. He would have to have an ironclad hold on it before they knew any stock was going to be out except the ones either Mr. Boyd and I had or the ones he had.

Also there was a document there from Mr. Bissett's office on the verifying of the shell corporation that he showed Mr. Segal.

Q I direct your attention to Government Exhibit 6 to your left and ask you to look at that please and tell us if you are able to identify that document.

A Yes, sir.

Q Is that the document you referred to as being on the table?

A Yes, sir. It is the one that I seen.

Q Do you recall anything further in respect of the acquisition of the Shell Corporation, Goldfield Candelaria or Select being discussed on that occasion?

A On that occasion, I seen some documentation on the table. It was a Mica Mine documentation. And also this here from Mr. Bissett. I believe it was a balance sheet on the Mica Mine that I seen.

Q Do you recall anything further?

A Well, just -- on the documents I don't remember anything further but on the conversation, it was that Mr. Boyd said he wanted at least $15 stock and Mr. Segal said that that was too high and Mr. Acton also said that is too high and I believe that I also said it was too high and also, later in the conversation, Mr. Segal said that he wanted all the stock transfer sheets daily on all the stock transferred where he would know just exactly where all the stock was and --

MR. SEGAL: I am sorry, your Honor. Was that dated or daily?

THE WITNESS: Each day.

And also that if any stock was took to my banks he wanted to know about it before the loans were made or closed on them.

Q What happened next?

A Well, I went back -- me and Mr. Acton went back to Los Angeles, California and went on, come on back to Lubbock and Mr. Boyd was with us.

Mr. Boyd, I believe, rode back with me on the plane from Reno back to Lubbock, Texas.

Q Did you have any occasion to discuss further the endeavors of Select Enterprises?

A Well, it was either on that plane or it was the next day that Mr. Boyd told me that he had some people that would -- you know, that would represent the company as president, vice-president and secretary, that was good people, he had known for a good long time and he told me that Dr. Knisely would be president and Mr. Weber secretary and Mr. Goodloe as vice-president.

MR. STOKAMER: Could the witness give the first name of Mr. Goodloe?

THE WITNESS: Mr. R.B. Goodloe.

Q Did you see any additional documentation, and I direct your attention to Government Exhibit 337, the second and third pages of that exhibit.

A Yes, sir. I have seen this.

Q Would you tell us in whose presence you were when you first saw the middle and third pages of that exhibit.

A I was with Mr. Boyd.

Q Did he tell you anything about it?

A Well, he told me when he got the shell bought and had a contract on it, soon as they got things straightened up on it, that Mr. Bissett had to do so much work on it and he was, at the time that he told me that he was going to make arrangements for the money down with Mr. Brookshire at Atoka to pay for it and the next day or the next day, I believe, it was, he called me and told me he was going to Atoka to take --

MR. ROONEY: May we have a definition of "he".

THE WITNESS: Mr. Boyd told me that he was going to Atoka to make arrangements for the money for the corporation and he was taking some underwriter development stock with him and that he was going to get Mr. Bannowsky to sign the note down there and soon as the papers was signed, they would transfer the money down to, over to

Reno, with the shell corporation.

Q How much money was thepurchase price?

A $40,000.

Q What happened next?

A Well, the next time I seen Mr. Boyd was in Reno.

Q Where were you in Reno and who else was present in addition to the two of you?

A Just me and Mr. Boyd was present. And it was the closing of the shell corporation --

Q Where did that closing begin?

A Well, it begin that morning. We went over to Mr. Bissett's office and I believe, if I am not mistaken, he had court or something that morning and he couldn't see us --

MR. ROONEY: May I have that answer, your Honor? I am sorry.

THE COURT: He said he had court that morning and couldn't see them.

Q Previously to going to Mr. Bissett's office had you been to some other location before you arrival at --

A We went -- before we went to Mr. Bissett's office, we had went over to Mr. Titlow's office and Imet

Mrs. Smith and Mr. Titlow for the first time and then me and Mr. Titlow and Mr. Boyd walked over to Mr. Bissett's office and it seems like Mr. Bissett had some court or something that he had to attend so we couldn't close it out at that time so we went, left and went back to the cafe or the room and then Mr. Boyd went back over and closed it out later in the day.

Q Let me ask you this:

Before you left the offices on that morning, had you seen or been shown any papers before you left as you have described?

A I remember seeing the contract but that's all I remember seeing at the time. It was just very shortly we was in there.

Q I would like you to direct your attention to the two exhibits, Government Exhibits 44 and 45 and ask you to look at those and tell us if your recollection is refreshed with respect to your having been shown the originals of which those are xeroxes.

A I didn't see these in Mr. Bissett's office at that time. I seen them later that evening when Mr. Boyd was going to Carson City.

Q In addition I would like to ask, do you have any further recollection in respect of signature samples,

having seen such documents?

A Well, Mr. Boyd told me, and I don't know what occasion it was, that he was going to get signature samples from Mr. -- Dr. Knisely and Mr. Weber, to where that he could -- they could be placed on the stock, where the stock could be printed.

Q Do you recall if you ever saw such samples prior to the printing?

A No, sir.

Q What happened next? In respect of the activities in Select Enterprises, what happened next?

A Well, Mr. Boyd drove on back to Carson City and I went on back home and the next occasion was Mr. Boyd called me and told me that he had made arrangements with Mr. Brookshire for some more money and that, if I could get Mr. Baker to go down there and sign the note, we could borrow some money on the Select stock.

So I sent Mr. Baker the next day to Atoka by plan. Mr. Sam Hale picked him up at Paris, Texas and they went to Atoka.

Q You weren't present on that trip so if you tell us who picked up who, you are telling us something that someone told you?

A Yes, sir.

Q Did there come a time when you saw Mr. Baker once again in Lubbock and he had told you what he had been up to?

A Yes, sir.

Q What did he tell you?

A He told me that he had been to the bank in Atoka and had not got the money and signed the note and come back and he got back late that evening and the next morning we took the $22,500 cashiers check which Mr. Baker got down at the bank down to Plains National Bank and transferred a $10,000 -- a $5,000 -- well, we got, transferred -- I put the money in the Plains National Bank in the safe deposit box and I took the $22,500 cashiers check and made two $5000 cashiers checks out and one $1000 cashiers check out and I give them to -- put the balance in the safe deposit box and the others I met Mr. Boyd that evening down at LaMesa, Texas and give him two $5000 cashiers checks and one $1000 cashiers check.

Q Did you have some discussion with Mr. Boyd in LaMesa, and tell us where it was in LaMesa and who was present and what the discussion was.

A Well, it was some cafe there in LaMesa, Texas and I don't remember what the name of it was but Mr. Baker was with me and Mrs. Boyd was with Mr. Boyd.

Me and Mr. Boyd got over in another booth and he was telling me about some acquisitions that he was working on and he talked about Mr. Grube's property in Midland and he talked about the oil property in -- I don't know what county it is in -- and also the Mica property in New Mexico.

Q Were any other persons referred to in the course of your conversation with Mr. Boyd on that occasion?

A Well, he did mention at that time that he was on the train with Mr. Maxson on the Pateo deal and that's all I could think of right now.

Q Were there any documents shown to you on the occasion of that meeting?

A They was a balance sheet there that he had in his briefcase and some contracts on some other property. I believe they was contracts on the oil and the mica stuff and I believe a balance sheet or there was a balance sheet there on the mica property.

Q I would like to direct your attention to the second document down to your left.

Look at 371 for identification, first of all; that document that you were just looking at.

A 371?

Q Yes, sir. In your right hand, Mr. Joiner.

Would you look at the checks that appear on that first page and tell the jury if you can identify it for them, please, if you can identify any of the checks which are photostated thereon?

A These are the checks that I give to Mr. Boyd down at LaMesa, Texas.

MR. MAC DONALD: In respect of Exhibit 371, it is stipulated that a custodian of records from the Midland Bank named therein, would, if called as a witness, testify that those photostats are of checks and statements and deposit slips made and kept in the ordinary course of business of the bank in its banking business and that they are maintained in the ordinary course of business.

Subject to that stipulation, we offer 371.

THE COURT: There being no objection, it is received.

(Government Exhibit 371 received in evidence)

Q Mr. Joiner --

MR.SEGAL: Can we see copies of those, please?

(Pause)

Q Mr. Joiner, to your left is Government Exhibit 1 for identification.

Would you look at that and tell the jury if you

can identify that?

A 371?

Q I am sorry. No. 1.

A I just give the government 357.

Q Let's take Government Exhibit 371 as a starter.

Do you recognize the signature of which 371 is a xerox?

A Yes, sir. I recognize the signature.

Q Whose signature is that?

A Mr. Bruce Baker.

MR. MAC DONALD: We offer the exhibit.

(Government Exhibit 371 received in evidence)

Q Government Exhibit 1 to your left, would you look at that, please, and tell us if you recall having been shown that document in the three page form that you see or in some other form on the occasion of the LaMesa, Texas meeting?

A This balance sheet was there on that meeting, on the table.

Also, the second page was there.

Q The report of the board of directors?

A Yes, sir.

Q How about the top page?

A 460

A I couldn't swear that it was there.

Q Did you have some conversation on the occasion of that meeting in respect of an accountant or accountants and the activities of Select?

A I had the occasion -- Mr. Boyd called me a day or two before that, a day or two after we come back from Reno. He had asked me if I knew where there was an accountant that could make up -- where we could get a certified balance sheet and I told him that I didn't know and he said, well, he was talking to one or two and, I believe a day or so later, he had telephoned me and said that he had made arrangements with an accountant to do a certified balance sheet or would work on one.

Q Did you see any stock certificates on the occasion of the meeting that you have been describing?

A No, I did not.

Q Did your conversation include the location or locations of Select Enterprises or Goldfield Candelaria stock certificates?

A I can't recall it.

Q How about the trading market in Select Enterprises stock? Did you have occasion to discuss with Mr. Boyd anything concerning making a market in the stock?

A We talked about it. On that occasion we talked about it.

Q What did he tell you?

A He told me that he had talked to Mr. Segal and that everything was going good and we just needed to get some more acquisitions and a certified balance sheet and that's about all the conversation was.

Q I would like to direct your attention now to in or about the first week of February, 1970 and ask if you had occasion to visit Mr. Roy Bell, an attorney, and conduct some business with him on your own behalf that had a connection with Select Enterprises and if so, tell us what it was.

A Well, Mr. Bell was my attorney on -- he was my attorney on my conviction on the bank and I knew Mr. Bell for several years and I went down to Mr. Bell and he had told me that he had some people over in Oklahoma that had some six oil wells that they was interested in doing some trading and they was just producing a couple of barrels a day a piece and that he was interested in trading some stock and I told them at that time that we had some stock that was fixing to go on the board, we thought, andit was going to be a good corporation and he might be interested in trading some of that, if he would be interested and he

said he would contact Mr. MacDonald and see if he would be interested in doing the trading.

Q What was the asking price, if any, that was disclosed to you with respect to those oil wells?

A $20,000 is what he wanted for the wells and I discussed that with Mr. Bell for a little while, a couple of hours, and then I went down to -- I went over to Midland, Texas and seen Mr. Boyd.

He was over there at the Pateo Building and I met Mr. Maxson there and also the lady that was answering the telephone -- I don't remember offhand what her name was -- and Mr. Baker was with me on -- when I was with Mr. Boyd and when I was with Mr. Bell.

We looked at the Pateo Building and stayed there about an hour and I don't remember offhand what the discussion was about. It was about some acquisitions that he was trying to -- that he had talked to people about, I believe the Mr. Grube property he even talked about and also some plastic deal regarding Midland that he was interested in doing some trading.

Q I would like to direct your attention to Exhibit 10-B.

Is that the next exhibit to your left?

A 83 is this one.

Q I would like to specifically direct your attention to the fourth page of 10-B and the handwritten entries that appear thereon and ask you to read those to yourself and tell us if your recollection is refreshed in respect of a conversation you had concerning the matters referred to therein.

A Well, Mr. Boyd, I told Mr. Boyd that -- you want me to read these off?

Q No, sir. I just want to know if you now have a refreshed recollection concerning talking to Boyd about some Sel-ct Enterprises stock and the use to which it was to be put.

A Well, first of all, I told --

MR. SEGAL: Your Honor, I will object to this. We are getting refreshed recollection without the witness indicating he needed it and now a document has been shown to the witness.

THE COURT: I don't think that that is a proper objection for this purpose.

Having examined this exhibit, 10-B, can you now recall any conversations that you had with Mr. Boyd and if so, what were they?

THE WITNESS: Yes, your Honor, I did.

Me and Mr. Boyd talked about the stock and he

was going to put so much stock in each one of the people-that-he-knew's names. The people that had helped him out and the people that he knew, he was going to put so many shares of stock in each one of them's name and he asked me if that was all right with me and I told him that was all right with me, that I didn't particularly want any in my name and he said, "Well, we got to put it in somebody's name and I am going to go ahead and put it in Mr. Weber's and Mr. Knisely and Mr. Bannowsky's and I don't know who else's name."

He asked me if that was all right and I told him yes, that was all right.

Q The handwritten material on that page includes the name Bell, does it not, next to a typewritten entry?

A Yes, sir, it does.

Q Did you have some conversation on that subject with Mr. Boyd?

A I told him that, at that time, that Mr. Bell had told me about the trade, and that he had a trade in Oklahoma for some little oil wells, if I was interested in trading and I might have to -- I would have to put up 1500 shares of stock in escrow and then later on, you know, would have to transfer them over to Mr. McDonald if they

traded.

So, he let me have 1500 shares of stock and they was in his name.

Q Did he sign stock powers, transferring his interest in that stock?

A He had stock powers with him.

Q Do you have Exhibit 83 before you?

A Yes, sir.

Q Can you tell the jury if you can identify that exhibit, please?

A Yes, sir, I can. It's a charter for Imperial National Corp., a Texas corporation.

Q What if any connection does Imperial National have to Select Enterprises?

A I took some Select stock and transferred it to Imperial National Corporation, a corporation of mine in the State of Texas.

Q Did you cause it to be formed?

A Yes, sir, I did.

Q Who were the authorized signatories on behalf of that corporation?

A Mr. Bruce Baker and Mrs. Sandra Darby.

Q Is Government Exhibit 83 in evidence the charter from the State of Texas chartering that corporation?

A Yes, sir.

Q Did it thereafter open a bank account?

A Yes, sir, it did, at the Plains National Bank.

Q Would you tell us what funds were put into the bank in opening the account and who was the authorized signature to draw checks on that account?

A The funds went in the account was some funds left over in the safe deposit box, three or $4,000, and the authorized agents on that was Miss Sandra Darby and Bruce Baker.

Q I would like to direct your attention to on or about February 20, 1970 and I ask if on that day you had a telephone conversation with Mr. Segal?

A Mr. Segal called me and, on Thursday or Friday and asked me where Mr. Boyd was, that he had been trying to get a hold of him, that he had called and there wasn't nobody at the Midland office, nobody to answer the phone and the Security Exchange Commission was snooping around and he needed the balance sheet, certified balance sheet and some deeds and appraisals and in this thing and he needed to get a hold of Mr. Boyd fast and I called Mr. Weber's office -- first called Mr. Boyd's house and he wasn't there and then -- there wasn't nobody there and then

I called Mr. Weber's office and then I called Dr.Knisely's office and left word, left word every place I could for him to call Mr. Segal.

Q What happened next?

A Well, he in turn called me back before the night was over, Mr. Boyd did, and told me that he got a hold of Segal and Segal said that the SEC was looking around and we needed to get certified balance sheet in there and all the deeds and the properties and everything in there and appraisals that was, had to be got in there and he was going to Reno and then on to New York.

Q On that same day, February 20th, had some other activity on behalf of Select Enterprise been undertaken by Mr. Baker or Mr. Hale?

A Mr. Baker had been working on a deal with a fellow by the name of Stroud down in Hamilton, Texas, that he had knew for several years that was -- had some lake-lot property and he had made a contract on the trade to trade some Select Enterprise stock for the lake-lot properties

Q I would like to direct your attention to Government Exhibit 68 and ask you if you can identify that exhibit.

A Yes, sir.

Q What is that?

A 468

A That is a contract made with Harold Stroud in Imperial National by Mr. Baker, for the trade for 233 lots.

MR. MAC DONALD: We offer 68 for identification.

(Government Exhibit 68 received in evidence)

Q Directing your attention to the three-day weekend, Saturday, George Washington's Birthday weekend, Saturday the 21st, Sunday the 22nd, Monday the 23rd, did you have occasion to have any additional telephone conversations with Mr. Boyd over the course of that weekend?

A I talked to Mr. Boyd again on several occasions on the telephone and he said that, said that we had to get that, the appraisals and the certified balance sheet up to Segal.

Q I would like to show you Government Exhibit 10, to the page with the name preceding the page with the name Sandy Darby at the top and ask you to look at the four names on the preceding and the succeeding page and read it to yourself and tell us, if you will --

MR. SEGAL: Objection.

THE COURT: Read it to yourself first and we will wait for a question.

(Pause)

Q Now, do you have some further recollection in respect of communication with Mr. Boyd on that subject?

A He told me, called me on the telephone in Lubbock and told me that he needed some names and some addresses of people that I knew and trusted to put stock in for stockholders list.

Q What did you do?

A And I in turn give him these names and addresses by telephone.

Q Would you tell us, please, the names -- it's not necessary to repeat the addresses, that you provided?

A Jack Geddes, Bruce Baker, Sam Hale, R.J. Darby, Sandra Darby, Ed Hunter, Roy Bell.

Q I would like to direct your attention to on or about March 5, 1970 and ask you if on that day you had occasion to travel to Abilene, Texas on some business in connection with Select Enterprises.

A Mr. Baker told me that he was about ready to make this trade with Mr. Stroud on them lake-lots, so I talked to Mr. Boyd and told him I was going to need some stock to make that trade.

He told me to go toMr. Ford's office in Abilene, Texas and pick up the Ed Goodloe stock and me and Baker travel to Mr. Ford's office in Abilene,Texas and picked up 60,000 shares of Select Enterprises stock.

Q From who?

A Mr. Ford.

Q Did you have occasion to sign any papers on the occasion of that delivery?

A I signed a receipt for the stock.

Q Look at Government Exhibit 339, please. Look from the fifth through the tenth pages inside that exhibit. Tell us if you are able to identify the copies that comprise that?

A Yes.

Q What is the entry at the upper right-hand corner?

A March 5, 1970.

Q Look at the page that follows that. Tell us if you recognize the signature on that page?

A Yes.

Q Did you sign that?

A Yes, I did.

Q Look at the next three pages and tell us if you recognize the matters that are photocopied there?

A Those are the stocks I picked up in Mr. Ford's office.

MR. MacDONALD: We offer the pages of 339 as identified.

THE COURT: We will call those pages 339-A.

MR. SEGAL: Does that consist --

THE COURT: Those are the two pages that have the witness' signature and three stock certificates following.

MR. SEGAL: I have five pages. The exhibit is split.

THE COURT: There are two pages that have the signature, the first two in your left hand. Then there are three stock certificates.

MR. MacDONALD: It would be helpful if the witness looked at the sixth page and see if he can identify that as well. Maybe that's what Mr. Segal has reference to.

Q Can you identify that?

A Yes, sir. That's the stock power that I got with the stock.

MR. MacDONALD: We ask that that be included in the pages offered, 339-A.

(Government's Exhibit 339-A was received in evidence.)

Q What did you do with the originals of those copies you have identified to the jury?

A I brought them back to Lubbock, Texas and, in

turn, sent Mr. Sam Hale to Reno, Nevada to have them transferred over to the Imperial National.

Q Did you have occasion to travel with Mr. Hale in that regard?

A I don't believe I did.

Q Did you receive a report thereafter Mr. Hale in regard to the trip to Reno?

A Yes.

Q What did he tell you?

A He told me he went out and got the stock transferred and brought it back.

Q Directing your attention to Monday, March 9, 1970, did you have occasion on the afternoon of that day to attend a meeting at the Worth Hotel and, if so, tell us who was present and what the conversation was on that afternoon?

A I met Mr. Boyd and Mr. Weber, and Mr. Chapel, Mr. Bickel at the Worth Hotel. Mr. Boyd had just got back from the SEC and him and Mr. Weber and Joe was telling me and Mr. Chapel and Mr. Bickel how things was going, and that he delivered the balance sheet to them and that he thought everything was going to be all right.

Q I direct your attention to Government Exhibit 2, at your left. I ask you to look at it and tell us if

you can identify that exhibit as having some bearing on what Mr. Boyd was saying?

A Yes. This is the balance sheet that he said he gave to the SEC.

MR. MacDONALD: We offer the exhibit.

MR. SEGAL: May I have voir dire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. SEGAL:

Q Looking at Exhibit 2, was that balance sheet actually shown to people in the hotel room that day?

A I don't know whether he showed it or not. He said he gave it to them.

MR. SEGAL: I would object to that. There is no foundation for this witness introducing this document.

BY MR. MacDONALD:

Q When and where did you first see the document, or another copy you have in your hand?

A I saw it downtown in the motel, Holiday Inn downtown.

Q When?

A The next morning, I believe.

Q In whose hands did you see it on the occasion of that morning?

A Mr. Boyd.

MR. MacDONALD: We offer it.

THE COURT: It will be received.

(Government's Exhibit 2 was received in evidence.)

xx Q Directing your attention, Mr. Joiner, back to the previous evening at the Worth Hotel. Would you tell us, if you can recall, any further discussions that Mr. Boyd had on that occasion?

A He just said that he had given them the balance sheet and some contracts on two different acquisitions, and that's all I can recollect.

Q Did he use some description, perhaps not the name of the entities being acquired?

A He said that the minteral property was on the balance sheet, and the mica was on the balance sheet, and he made -- he had given them two other acquisitions or contracts. I don't remember at this time what they was exactly.

Q Did you have some conversation with Mr. Weber on the occasion of that meeting?

A I asked him later on in the evening how things went up there and he said they didn't look too good to him: there had to be a lot of paper work and a lot of work left

yet.

Q Following the meeting, did you have occasion to have supper with a different grouping of people?

A Well, me and Mr. Boyd went on over, and Mr. Bickel went on over, to the Holiday Inn and had dinner for that evening.

Q Did the conversation include any references to Select Enterprise stock in any fashion? If so, tell us what your recollection is.

A Nr. Boyd and Mr. Bickel was talking there, and Mr. Bickel said to Boyd -- there was some conversation there between Mr. Bickel and Mr. Boyd, and I just got part of it, but I do remember Mr. Bickel saying he needed 1500 shares of stock, or 2000 shares of stock. He changed it one or two times there.

Q Do you have a recollection of discussing a million-dolar insurance policy or 2 million-dollar insurance policy?

A Mr. Bickel talked earlier that day over at the motel and mentioned about a million dollars of insurance on me and Mr. Boyd and he had mentioned it again that night, but it was just very casual on that occasion.

Q What happened next?

A Well, the next morning -- we spent the night

there -- the next morning me and Joe sat down there in the hotel room and he showed me, opened his briefcase and showed me the balance sheet and showed me the group property contract, and he showed me the contract on the California property, and we looked over the mica balance sheet again, the C. A. Morris balance sheet again, and the California property, the Patio Building contract --

Q I would like to direct your attention to the exhibit to your left in the file and ask you if you would refer to it by the number that is tagged there and tell us if you are able to identify that?

A The tag number is 7-B.

Q Do you recall having seen that document or a copy thereof on that occasion?

A Yes.

Q Did you have some discussions concerning that?

A He told me that morning that he had given -- he told the SEC about this contract and also the Diamond Bros. furniture deal and also the Riverside Hotel contract.

MR. SEGAL: I object, your Honor. The witness testimony is inconsistent with what --

MR. MacDONALD: Objection, your Honor.

MR. SEGAL: There is no other way I can point it out to the Court.

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THE COURT: The objection is overruoed.

Would this be a convenient place to suspend for lunch? We have had a long morening without a recess.

MR. MacDONALD: Yes, your Honor.

THE COURT: We will now recess for lunch.

Off the record.

(Discussion off the record.)

(Jury excused.)

THE COURT: Off the record.

(Discussion off the record.)

(Luncheon recess.)

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AFTERNOON SESSION

(2.00 p.m.)

(Jury in box.)

J I M M Y C A L V I N J O I N E R , resumed.

DIRECT EXAMINATION (Continued)

BY MR. MacDONALD:

Q Mr. Joiner, before the break we were talking about a meeting at the Holiday Inn, a morning meeting, with Mr. Boyd during which time he was telling you certain things and showing you certain documents concerning Select Enterprises.

Q Do you recall the meeting?

A Yes, I do.

Just before we went over to Mr. Bickel's office in the Holiday Inn -- and at that time Mr. Boyd's briefcase was open -- we were looking at the balance sheet and the two contracts, Riverside contract and the Diamond Bros. contract, and the old mica contract, A. C. Morris balance sheet, and there were several papers there, but that's all I can remember.

Q You already have identified, I believe, Government's Exhibit 2, the balance sheet on the top of the pil e there?

A Yes.

Q That's the balance sheet that was shown to you on that occasion?

A Yes.

Q Look, please, at 7-B and 8-B and tell us if you are able to identify those exhibits in respect of that morning's meeting?

THE COURT: What is the date you are inquiring on?

MR. MacDONALD: On or about March 10, your Honor.

THE COURT: 1970.

A Yes, I do.

Q Are those exhibits, 7-B and 8-B, documents which you saw during that morning?

A Yes.

Q Address your attention, please, to the next exhibit in the pile. Tell us the number on the exhibit and tell us if you are able to whether or not you remember seeing that on the occasion of that morning?

A Document 316 I vaguely remember.

Q That's the document that bears Mr. Grube's name on the bottom?

A Yes, it is.

Q Can you tell us if you remember anything that Boyd said in regard to Mr. Grube on the occasion of that

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morning, whether or not you can identify the document?

A I vaguely remember seeing the document there, but, you know, just vaguely.

Q I would like you to look at and tell us if you have any different recollection concerning 317 and 318, the next two exhibits in the pile?

A It was mentions about the Grube property but I didn't pick them up and handle them as I did Riversid and the Diamond Bros. and the contract.

Q I direct your attention to Government Exhibit 58 and 59 in the pile to your left. I ask you to look at those and tell us if you have a recollection of having seen either of those exhibits on the occasion of that morning or having discussed the subjects that I referred to in those exhibits?

A It was mentioned, but, like I say, like the Grube property which is vague, I didn't physically handle that. I vaguely remember seeing that.

Q You said it was mentioned. Can you tell the jury if you have a recollection of discussing a man by the name of Maxson, any properties he may have owned or controlled?

A We were kind of going down through the balance sheet, and the Grube property was on the balance sheet.

It was kind of mentioned as Grube property and the mineral rights, all mineral rights which were kind of mentioned, and the mica was kind of mentioned, and it was just as we go down through the balance sheet that it was kind of mentioned there.

Q Did there come a time when you spoke about some land in California?

A I was told about the land in Imperial Valley in California.

Q What did he say about that?

A He said that he was working on an acquisition of several acres of land out in California.

Q Do you recall anything further at that meeting?

A That's all there was. He mentioned the California property, but he didn't go into detail about it. He said it looked like it was going to be a good acquisition and he should know something about it before too long.

Q What happened next?

A Well, let's see, then we left the Holiday Inn and went over to Mr. Bickel's office and signed the insurance policy for Mr. Bickel.

Q Look at Exhibit 281-A to your left and tell us if you can identify the signature on the bottom of that of which that is a Xerox?

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A It looks like Mr. Boyd's signature.

Q That's 281, is it not?

A Yes.

Q Look at the next exhibit, 281-A, and tell us if you can identify the signature at the bottom of the two pages that comprise that exhibit?

A That's my signature.

Q The second page of 281-A?

A Yes.

Q How about the top page?

A It looks like Mr. Boyd's signature.

MR. SEGAL: I ask that that be stricken, your Honor.

THE COURT: Strike it out.

MR. MacDONALD: We offer page 2 only of 281-A.

THE COURT: Is there any objection to page 2 only?

(Pause.)

It will be received without objection.

(Government's Exhibit 281-A, page 2, was received in evidence.)

xx MR. MacDONALD: We will call the Court's attention to the question and answer that appear on the bottom of 748 and 749, yesterday's transcript, and we

would offer the top page as well in the light of that testimony.

(Pause.)

THE COURT: What about that, Mr. Segal?

Do you have that question and answer of yesterday's testimony by the witness Chapel?

MR. SEGAL: I remember that. There was testimony about that document.

THE COURT: Which identified the signatures.

Both pages could therefore be received.

(Government Exhibit 281 was received in evidence, two pages.)

xx Q Directing your attention to on or about March 15, 1970, did you have occasion to have a discussion with Mr. Boyd concerning a Mr. Alan Segal and a locked box in New York?

A Mr. Boyd called me on the telephone and told me that he was going to New York to get the stock out of the locked box in New York, and he wanted me to give him some names of people that I wanted to put some of the stock in, and I, in turn, gave him Mr. Geddes and Mr. Sam Hale and Mr. Bruce Baker and Mr. Ralph Hunter.

Q Directing your attention to the period of March 19 to March 27, 1970, did you have occasion during

those days to undertake some transaction with two men named Carver and Headley with regard to stock? If so, describe to the jury what that transaction consisted of?

A Mr. Sam Hale knew Mr. Headley for two or three years. Headley had talked over the telephone a couple of days prior to him and he told Mr. Hale that he had a man by the name of Carver that needed some stock to borrow some money with, and me and Mr. Hale went over to Mr. Headley and talked to Mr. Headley and put up 21,000 shares of stock, and a couple of days later Mr. Carver called Mr. Hale, and I went over to the bank in Dallas and got $5000 from Mr. Carver. Mr. Hale brought the 5000 back to me and I gave part of the thousand to Mr. Hale and paid bills with the others, I guess.

Q I would like ou to look at Government Exhibit 84 and tell us if you can identify those documents in respect of that transaction?

A Yes, sir. The first pages. I don't know about the last two.

Q When you say the last two, are you referring to what appears to be a resolution signed by Hanson.

A Yes, sir.

Q And the page behind it as well?

A No. It's a letter by Herndon. Leo Herndon this is signed by. These first --

Q Other than the pages that you have excepted, the rest of it relates to the Headley transaction?

A Yes, sir.

Q That refers, does it not, to Mr. Boyd and to Mr. Boyd having supplied certain stock certificates concerning the carrying out of that transaction?

A Yes, sir.

Q Tell the jury the circumstances surrounding your being in physical possession of these stock certificates from Mr. Boyd, if you were?

A I got the stock certificates, 21,000 shares, from Mr. Boyd and gave them to Mr. Hale.

Q Did you share any of the $5000 that you received

with Mr. Boyd?

MR. SEGAL: Objection.

THE COURT: We will sustain that objection.

Did you give any part of the $5000 to anybody?

THE WITNESS: Yes, sir.

MR. HALE: To whom?

THE WITNESS: Mr. Hale.

Q And none to Mr. Boyd?

A No, sir.

Q I direct your attention to on or about March 29, 1970, a Sunday, and did you have occasion to attend a meeting at the Holiday Inn in Texas in respect of Select Enterprises activities with other people and, if so, tell us who and what the meeting was on that occasion?

A Me and Mr. Boyd and Mr. Barnett met Sunday Morning at Holiday Inn, downtown Dallas, and we had breakfast downstairs and then we went up to a room in the Holiday Inn and me and Mr. Boyd and Mr. Barnett did, and on that occasion I seen a balance sheet and a telegram and Mr. Boyd and Mr. Barnett and myself was in this room and we was trying to get Mr. Barnett to certify the financial statement and he needed -- he was needing some money before he wanted to do it and he needed some -- it was either one of the items on there that he needed before he wanted

to certify the balance sheet and I believe the telegram was one of them and it seemed like he was wanting a title policy or something on the others, and the money.

Q Will you look around the courtroom and identify Mr. Barnett for the jury, if you see him here today.

A Yes, sir. That's him right over yonder in the brown suit (pointing).

Q What was the resolution? What happened at the end of the meeting?

A Well, when the meeting was over, we come out -- when we got through and Mr. Barnett signed it and give it to Mr. Boyd, Mr. Boyd told him that we would get him some money in a few days and then, as we left, why Mr. Boyd said, "Well, we got it signed."

Q Would you look at the next exhibit and refer to it by the tag that appears there and tell the jury if you are able to identify that?

A 3-C?

Yes, this it.

MR. SEGAL: Can we have the number on that, please, your Honor?

THE COURT: 3-C.

Q Would you look at the succeeding document and identify it and refer to it by the tag and tell us if you

are able to identify that.

A Yes, sir. It was the telegram.

Q That's what Government exhibit?

A 3-O, I guess.

Q 30.

A 30.

MR. MacDONALD: We offer both exhibits.

THE COURT: There being no objection, they are received.

MR. SEGAL: May I have a voir dire on 30?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. SEGAL:

Q I show you Exhibit 3-C and 30.

Did you see Exhibit 30 in the room on that day?

A I either seen that one or a copy of it.

Q On that day?

A Yes.

Q Was that exhibit in th room at the time you were there?

A Talking about Exhibit 30?

Q That's right.

A Well, I seen it in that room.

Q I am trying to find out just when and I want to

find out whether you saw it in the course of this conversation you just related.

A Yes, I did see it in that course of conversation.

Q During that conversation.

With regard to Exhibit 3-C, did you see that document or at least a copy which is identical to this document on that day?

A Yes, I did.

Q Did you in addition see the document which is on the top of 3-C, the letter?

A This top sheet?

Q That's correct.

A I see this or a copy of it.

Q On that day?

A On that day.

Q Was it typed in that room or was it alrady in the room at the time?

A It wasn't typed in the room.

Q It was produced at that time?

A Yes.

MR. SEGAL: No objection, your Honor.

(Government's Exhibits 3-C and 30 were received in evidence.)

BY MR. MacDONALD:

Q Mr. Joiner, directing your attention to on or about March 30, the following Monday, did you have occasion to attend a meeting at No. 1 Main Place at offices in that building in respect of Select Enterprises' activities? If so, tell us who was present and what the meeting was on that occasion.

A Mr. Boyd was there and Mr. Bickel was there and Mr. Chapel was and it was Mr. Chapel was making out a letter for the stockholders to send out to the stockholders of Select Enterprises and he made that, he prepared the letter to the stockholders at that time.

Q Would you tell the jury any discussions that occurred in respect of that letter?

A Well, he wrote it out and we all looked at it and I looked at the California property and I said that that is going to get somebody in trouble. That's about all the discussion there was on it.

Q Would you look at Government Exhibit 4 and tell the jury if you are able to identify that as the document prepared on that occasion?

A Yes.

Q I would ask you, did there come a time thereafter when Select started to occupy office space at a new

address?

A Yes. Started to occupy -- we had an office at 3131 Stemmons Freeway.

Q Describe to the jury what they would have seen if they had gone to that address back in April of 1970?

A Two small offices with two desks and a telephone.

Q Who occupied the desks?

A Well, just -- I occupied one of them and I guess any and everybody occupied by the, you know, whoever came in, me and Mr. Boyd and Mr. Hale and Mr. Baker, I guess on some occasions.

Q Was there a sign on the door?

A Yes.

Q Did there come a time at that location when you had occasion to meet a man named Virgil Barker and, if so, would you tell the occasion of his coming there and the business that was discussed?

A Mr. Barker called -- I met Mr. Barker a week or two before and Mr. Barker had come by the office and said that he had some brokers that he could probably get to put in the pink sheets for Select Enterprises and we talked back and forth for a day or two and he told me that he was going to Denver and that he would be back in touch with me and if I could get some shares of stock put in his name,

well, then, he could get some brokers to go in the sheets.

Q What if any action did you take following that conversation?

A Well, I went to Reno and got some -- when I transferred -- I went to Reno and transferred some stock for Desert Investment Corporation and Vinson -- Desert Investment and Vinson something corporation.

Q I would like to ask you to look at the file, Government Exhibit 84. Do you recall telling us that one of the documents in the Headley file did not relate to the Headley matter?

Mr. Joiner, I am showing you that portion of 84 which bears Mr. Hanson's signature.

A I went to Reno and transferred these stocks from -- picked up these stocks from Vinson Investment Company and the Desert Investment Company and at the same time I transferred some stock into Mr. Barker's name and Mr. Harbottle. Barker and Harbottle is all I remember right now.

Q Did you have occasion to deliver anything in Reno on the occasion of that trip?

A Yes. I delivered a couple of checks out there to Mr. Bissett's office and one to the transfer agent.

Q Would you look at the next exhibit before you

and tell us if you are able to identify it by denomination, perhaps, the check or checks that you delivered on that occasion and refer to it, please, by the tag so the record will reflect which exhibit it is?

A Exhibit 356. I delivered two checks, one to Nevada National Registrar and then one to Mr. Bissett's office and I believe this one to Mr. Bissett's office was 905, 906 something, but I delivered two checks.

Joe told me to deliver the two checks to Mr. Bissett; Mr. Bissett, over there, to the National Nevada transfer agent.

MR. MacDONALD: It is stipulated that in respect of Government Exhibit 356, a custodian of records from the Bank of Atoka, Atoka, Oklahoma, if called as a witness would identify the pages comprising that exhibit as business records made and kept and maintained in the ordinary course of the banking business of his institution.

We offer the exhibit.

MR. SEGAL: Your Honor, I would object to it. They may be business records but the organization is something else. This thing is being offered as one exhibit.

THE COURT: You mean the staples should be removed?

MR. SEGAL: Your Honor, this is a collection of

documents all together as if it comprises one document and my objection is to that.

THE COURT: That's very simple. We will just remove the staple.

MR. SEGAL: We will have to sub-number all these oduments in the thing.

THE COURT: That's all right. It won't take very long to do that.

(Pause.)

THE COURT: Is there any objection to putting all the checks together, and then all the deposit slips separately together?

MR. SEGAL: I suppose that would be all right, your Honor.

THE COURT: And then the bank statement separately, so that will be marked as follows:

All of the checks, being ten items, are marked Exhibit 356-A.

The three deposit slips are 356-B.

Can you identify what these two are?

THE WITNESS: No, sir, I cannot.

THE COURT: Mr. MacDonald, what name shall I give these two pieces of paper?

MR. MacDONALD: I would think a debit or credit

item description would be accurate.

THE COURT: Two items such as described by Mr. MacDonald are 356-C.

356-D, the Joe Boyd special ledger account, consisting of two pages.

(Government's Exhibits 356-A, B, C and D were received in evidence.)

(Continued on next page.)

Q Mr. Jointer, you have open before you Government Exhibit 330 for identification to a page containing a copy of a check drawn on the First National Bank of Atoka. Can you identify that check, the copy of the check that appears there?

A This is the check, a copy of the check, that I took out to Mr. Bissett's office, an expense check, and he got it cashed for me.

Q In addition to the other checks you have already described to the jury?

A Yes.

Q I would like you to tell the jury, please, what you did following the occasion of that trip to Reno. Where did you go and what did you do?

A I returned back to Lubbock and left a share of stock to be given back to Joe. Then I went -- I returned back to Dallas -- excuse me -- and then I went to Denver to meet with Mr. Barker, and I met with Mr. Barker one evening and the next day I met with a fellow by the name of Dobbs.

Mr. Barker, Mr. Dobbs, and myself went down to the bank and they went in there to see some officer.

Q What was the purpose of that visit to the bank as expressed amongst yourselves, if any?

A They went in there to see if they could borrow some money on some stock, and we left the bank and went back over to Mr. Barker's place and I spent the night, and the next day I went home.

Q Did you receive a report from them after they came out of the bank with respect to whether the bank would loan them any money?

A He could not borrow any money.

MR. SEGAL: I ask that that last conversation about the Denver situation be stricken as irrelevant.

MR. MacDONALD: They are named in the supplemental, your Honor.

MR. SEGAL: Your Honor, even under those circumstances I still don't see relevancy.

THE COURT: In view of the identification in the supplemental bill we will take it subject to connection.

Q What happened next in respect to the stock that you had taken to Denver and the occasion of your trip to Denver? What did you do next?

A I returned back to Dallas.

Q What about the stock certificates?

A I left them with Mr. Barker and I returned to Dallas.

Q Did there come a time in Dallas when you had

occasion to meet with some person or persons in respect to Select Enterprises' activities?

A I met Mr. Rouse and Mr. Mullenax.

A Would you tell us where you were when that meeting occurred, the occasion of it and the discussio n on that occasion?

A I met them in 3131 Stemmons Freeway, and they were coming in and talking to Mr. Boyd and me, and Mr. Rouse had an insurance agency or something, and he was interested in either --

MR. ERHLICH: I didn't understand the last portion of the testimony.

A (Continuing) Mr. Rouse had some kind of insurance company that he was interested in, either getting some stock for or making some acquisitions for. Him and Mr. Mullenax talked to Mr. Boyd and talked to me also, and they also said that they had a place where -- Mr. Rouse said he could borrow some on some stock through his insurance agency, insurance company; and on that occasion, either the next day or in one or two days, they got some stock from Mr. Boyd and left.

Q Did you have occasion to sign anything with respect to the delivery of that stock?

A I signed the -- the stock was in my name, and I

went down to a bank and signed a power, stock power.

Q I would like you to look at your left at Exhibits 105, 110, and 111, and tell the jury, if you can, whether you are able to identify those exhibits?

MR. SEGAL: 105 or 107?

MR. MacDONALD: 105, 110, and 111.

Q Mr. Joiner, refer by number to the exhibit you are looking at and tell us if you are able to identify the piece of paper that bears the number. Use the number.

A Exhibit 105, Exhibit 110, and Exhibit 111. Those are stock powers.

Q Which you signed at a bank on that occasion?

A Yes. 107, 111, 105, and 110.

MR. MacDONALD: We offer the exhibits.

MR. SEGAL: May I have a brief voir dire on Exhibit 107?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. SEGAL:

Q Mr. Joiner, if you would look at the reverse page of the second page of Exhibit 107, do you recognize the handwriting on that?

A No, sir, I don't.

Q Was that handwriting on there at the time you

last saw this exhibit?

MR. SEGAL: I merely ask that the reverse side of Exhibit 107 be obliterated or covered.

MR. MacDONALD: In this instance I think the succeeding witness will offer help in this regard. We ask it not be erased but deferred, passing it until --

THE COURT: We will hold the exhibit until you have another witness.

MR. EHRLICH: No objection to Exhibits 105, 110, and 111.

THE COURT: They will be received.

(Government's Exhibits 105, 110 and 111 were received in evidence.)

xx BY MR. MacDONALD:

Q Mr. Joiner, of the remaining exhibits before you there is a Xerox comprised of two pages. What is the number on that exhibit?

A 123.

Q Can you make up any of those three pages that make up that exhibit?

A It looks like a copy of one of the stock certificates that I signed, the stock power.

Q What happened to the originals of which that is a Xerox?

A That was given to Mr. Rouse and Mr. Mullenax.

MR. MacDONALD: We offer that exhibit in addition.

MR. EHRLICH: I have an objection to that. I believe the witness testified that it looks like the original. On that basis I object.

Thank you, your Honor.

THE COURT: It will be received.

(Government's Exhibit 123 was received in evidence.)

xx Q Directing your attention to on or about the last week of April, 1970, did you have occasion to have a telephone conversation with an individual by the name of Tony Garza in respect to any Select Enterprises activities and, if so, would you report to the jury your recollection please of that conversation?

A The only conversation I had with Mr. Garza, he called the office looking for Mr. Boyd and wanted to know where Mr. Boyd was, and I told him Mr. Boyd was in Albuquerque changing transfer agents, to check with the new transfer agent.

Q Thereafter did you have a conversation with Mr. Boyd about such a trip?

A Yes. He told me that he had come back and

made arrangements with Rocky Mountain Securities transfer, or something out of Albuquerque, to be the transfer agent.

Q I would like to direct your attention to the last week of April, 1970, and ask you if you had occasion to a conversation with a man by the name of Mel Richards concerning Select stock business activities and, if so, tell the jury what you recall of that conversation?

A I called Mr. Richards up at Las Vegas, Nevada and asked him why I was having so much trouble getting Select stock on the board.

Q Tell the jury who Mr. Richards was, if he has been described to you. Who had mentioned his name to you?

A Mr. Boyd had told me that he had talked to Mr. Richards out at Las Vegas and also Mr. Barker had told me that he knew Mr. Richards and he knew Mr. Richards to be a stockbroker in Las Vegas. I never met the man, but I called him on the telephone and asked him what the trouble in getting the stock on the board or in the pink sheets was, and he told me that he had applied to put the stock on the board with the National Quotations and that was about the conversation.

Q Do you remember if he was associated with a brokerage firm of any name and, if so, tell us what you recall or what is the name of the firm he was associated

with?

A (Pause.)

Something Enterprise, I believe.

Q I would like to ask you on or about the same time span if you had occasion to have a meeting with a man by the name of Stevenson from Florida concerning Select Enterprise and, if so, tell the jury what you can recall in that regard?

A Mr. Sam Hale talked to Mr. Stevenson on the phone a couple of times, and Mr. Stevenson said he had some people in Florida that was interested in buying investment stock. Mr. Hale told me about it and I, in turn, talked to Mr. Stevenson on the phone, and he said he had some people in Florida that was interested in buying some investment stock. So I went down to Florida and talked to Mr. Stevenson about it, and he said the same thing, that he had some people that were interested in buying investment stock, and he would have to have the stock in hand.

So I, in turn, come back to Dallas and had Mr. Hale go to Albuquerque and transfer some stock into Mr. Stevenson's name, and he came back to Dallas and I went on to deliver the stock to Mr. Stevenson in Florida.

Q I would like to direct your attention now to

the latter part of June, 1970 and ask you if in that time frame you had occasion to have additional conversations with Mr. Mullenax in respect to any Select stock activity. If so, tell us where they were, who was present, and what the conversation was.

A Mr. Rouse and Mr. Mullenax come back into Dallas at the Ramada Inn, and I talked to Mr. Mullenax and he said that he had some people in Wichita, Kansas that he could borrow some money on if he had some stock, and it had to be quoted stock. I was broke and everybody was broke, and I needed some money so I got some stock off another fellow by the name of Pig and Whistle, and I gave it to Mr. Mullenax, and him and Mr. Hale went to Wichita, Kansas and sent me back a check for $9000. I, in turn, gave it back to M.r Chapel and Mr. Chapel and Mr. Mullenax went back to Wichita, Kansas, and Mr. Chapel brought me back a cashier's check for $9000.

Q Look at the exhibit to your left, Exhibit 296-A, and tell the jury if you are able to identify the check that the arrow points to?

A Yes, sir. That's my signature on the check.

Q Is that the $9000 check?

A Yes.

Q That is what you referred to?

A Yes.

MR. MacDONALD: We offer that exhibit.

(Government's Exhibit 296-A was received in evidence.)

xx MR. EHRLICH: I had an understanding that that exhibit was received in evidence by the Court.

THE COURT: This witness has now mentioned his connection with the check. I think 296 was marked previously.

MR. EHRLICH: I object to the reception of 296-A in evidence which the witness has testified --

THE COURT: Not "because the witness has testified".

What is your legal objection?

MR. EHRLICH: Relevancy, your Honor. No mention of Select.

THE COURT: Overruled.

Q Mr. Joiner, I direct Your attention to the latter part of August, 1970. You had occasion to have some further discussion with respect to Select stock in the name of Imperial National, I understand. If so, tell the jury whom you had the discussions with and what you know about such stock activities in that time frame?

A Mr. Rouse called me on the phone and said he

had a trade made with some fellow by the name of Zimmerman who owned some property in Louisiana, I believe it was. Would we be interested in making that trade? I told him that I really didn't Know. I was not interested particularly o ne way or the other. That's about the most about that that I really remember.

Q Did you have occasion to deliver any stock certificates with the name Imperial National, Inc. on the face to any person or persons following your receipt of those stock certificates in Nevada in the spring of 1970?

MR. EHRLICH: I object as to form.

THE COURT: Overruled.

A I remember giving Mr. Rouse some Imperial National stock. I can't remember what occasion it was.

Q Directing your attention now to September of 1970, did you have occasion to have some discussion with Mr. Boyd concerning the bank in Atoka and selecting stock, and, if so, tell the jury who was present and what the discussion was on that occasion?

A Mr. Boyd said that -- Mr. Brookshire called up the office and said that Select stock was not on the market and he was going to have to have some replacement of some kind. Mr. Hull brought some Comutrics stock down there and put it there to replace the Select.

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